

COUNCIL MEETING

FEBRUARY 27, 2013

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Wednesday, February 27, 2013 at 9:25 a.m., after which the following members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Nadine K. Nakamura
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Excused: Honorable Tim Bynum

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and unanimously carried.

MINUTES of the following meetings of the Council:

January 12, 2011 Public Hearing re: Bill No. 2393
May 25, 2011 Public Hearing re: C 2011-159
September 5, 2012 Public Hearing re: Bill No. 2443
January 30, 2013 Council Meeting
February 5, 2013 Special Council Meeting
February 13, 2013 Public Hearing re: Bill No. 2462 and Bill No. 2463

Ms. Yukimura: Mr. Chair?

Chair Furfaro: Yes.

Ms. Yukimura: May I ask that the minutes of the January 30, 2013 Council Meeting be taken separately?

Chair Furfaro: Surely.

Ms. Yukimura: I would like to ask for a deferral on that.

Chair Furfaro: I am going to ask for a vote on the January 12th, May 25th, September 5th, February 5th, and February 13th. We will come back to January 30th on a separate discussion item.

Ms. Yukimura: Thank you.

Ms. Nakamura moved to approve the Minutes of the January 12, 2011 Public Hearing re: Bill No. 2393, May 25, 2011 Public Hearing re: C 2011-159, September 5, 2012 Public Hearing re: Bill No. 2443, February 5, 2013 Special Council Meeting, February 13, 2013 Public Hearing re: Bill No. 2462 and Bill No. 2463 as circulated, seconded by Ms. Yukimura.

Chair Furfaro: Thank you very much.

Mr. Rapozo: Mr. Chair, I just want to make sure, you are only asking to defer February 5th?

Chair Furfaro: January 30th.

Mr. Rapozo: Did the motion include May 25th?

Chair Furfaro: I read May 25th, yes.

Mr. Rapozo: You did? Okay.

The motion to approve the Minutes of the January 12, 2011 Public Hearing re: Bill No. 2393, May 25, 2011 Public Hearing re: C 2011-159, September 5, 2012 Public Hearing re: Bill No. 2443, February 5, 2013 Special Council Meeting, February 13, 2013 Public Hearing re: Bill No. 2462 and Bill No. 2463 as circulated, was then put, and carried by a 6:0:1 vote (*Bynum excused*).

Chair Furfaro: Thank you. At this time Councilmember Yukimura for the January 30th meeting you can give us in some rationale on your request for a deferral.

Ms. Yukimura: Yes, I just would like to be able to read it. There was a discussion on the Multi-Modal...in fact, that was the meeting, I believe, when we adopted the Multi-Modal Transportation Plan.

Chair Furfaro: We will defer this until the next meeting.

Ms. Yukimura: Thank you.

Ms. Yukimura moved to defer the Minutes of the January 30, 2013 Council Meeting, seconded by Ms. Nakamura, and carried by a 6:0:1 vote (*Bynum excused*).

Chair Furfaro: Next I am going to go to the Consent Calendar. For those of you in the audience, we have five (5) items on the Consent Calendar. Is there anyone that would like to offer testimony on the Consent Calendar at this time up to three (3) minutes with no Q&A responses from the Council? Is there anyone that wishes to speak on those items?

CONSENT CALENDAR:

C 2013-79 Communication (01/23/2013) from Councilmember Kagawa, transmitting for Council consideration, a Resolution supporting Kaua'i's fishermen, ocean gatherers, and recreational ocean users as it relates to their concerns with the

Hawaiian Islands Humpback Whale Marine Sanctuary, which is currently in the process of updating its management plan, to include, but not be limited to, the addition of other species to be protected, and additional rules and regulations for activities within the Sanctuary boundaries: Mr. Kagawa moved to receive C 2013-79 for the record, seconded by Mr. Rapozo, and was carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-80 Communication (02/04/2013) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Pauline D. Ventura to the Liquor Control Commission of the County of Kaua'i – Term ending 12/31/2015: Mr. Kagawa moved to receive C 2013-80 for the record, seconded by Mr. Rapozo, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-81 Communication (02/06/2013) from Council Vice Chair Nakamura and Councilmember Rapozo, transmitting for Council consideration, a Proposed Draft Bill Relating to the Identification of Licensed Electricians and Plumbers on Construction Job Sites in accordance with Hawai'i Revised Statutes (HRS) Section 444-9.5, to provide the Department of Public Works, Building Division with enforcement authority and to implement penalties for violations: Mr. Kagawa moved to receive C 2013-81 for the record, seconded by Mr. Rapozo, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-82 Communication (02/07/2013) from Councilmember Yukimura, transmitting for Council consideration, a Proposed Draft Bill to allow homeowners who previously, but did not file for the additional Low Income Exemption to obtain a credit for the difference between the amount of Real Property Tax assessed on the homeowner's property for the 2013 Tax Year and the amount of the Real Property Tax that would have been assessed had the homeowner applied for the exemption: Mr. Kagawa moved to receive C 2013-82 for the record, seconded by Mr. Rapozo, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-83 Communication (02/14/2013) from the Public Access, Open Space and Natural Resources Preservation Fund Commission's Vice Chair, transmitting for Council information, the Commission's 2012 Status Report, in conformance with the requirement of Ordinance 925, the County of Kaua'i, Public Access, Open Space, and Natural Resources Preservation Fund Commission. (*Copies of the Public Access, Open Space, and Natural Resources Preservation Fund Commission 2012 Status Report on file in the County Clerk's Office*): Mr. Kagawa moved to receive C 2013-83 for the record, seconded by Mr. Rapozo, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

Chair Furfaro: Thank you, on the same item, is there anyone wishing to testify to anything on the agenda? You will be allowed three (3) minutes at this time? No? Okay. We moved to receive the Consent Calendar.

COMMUNICATIONS:

Chair Furfaro: Now for the purpose of crowd management, we are going to the particular piece done on our behalf from the Kaua'i Planning Alliance dealing with cultural and fine arts visioning for the Council. On that note, I would like to turn it over to you, Vice Chair.

Chair Furfaro, the presiding officer, relinquished Chairmanship to Ms. Nakamura.

There being no objections, C 2013-84 was taken out of order.

Ms. Nakamura: Thank you very much, Chair. I would like to call Diane Zachary who is the President Of the Kaua'i Planning & Action Alliance and George Costa, Office of Economic Development.

C 2013-84 Communication (01/03/2013) from Council Vice Chair Nakamura, requesting the presence of the President and CEO of Kaua'i Planning & Action Alliance to provide a progress report and update on the Arts & Culture, Comprehensive Economic Development Strategy (CEDS) Project.

Ms. Nakamura: George, would you like to provide an overview and context for this update.

There being no objections, the rules were suspended.

GEORGE K. COSTA, Director of Economic Development: Sure. Aloha Chair Furfaro and Vice Chair Nakamura and Honorable Councilmembers. Over the last few weeks, I have been here before you presenting updates on our CEDS Projects. As I mentioned previously, the Comprehensive Economic Development Strategy or commonly known as CEDS, really looks at our economy and goals to help diversify our economy. So, along those lines we have...through a focus group and task force, we have created emerging industry clusters. There are six (6) that are part of the Economic Development Strategy. Today, we are here to provide an update on one (1) of those clusters, the Arts & Culture cluster. We have been working alongside Diane Zachary of the Kaua'i Planning & Action Alliance. Diane has done very good work for us not only in the Arts & Culture, but other of those emerging industry clusters, Sports and Recreation, to make a few. I would like to ask Diane to provide an update on what she has worked on in last year and the next steps.

DIANE ZACHARY: Thank you very much, George. Good morning, Chair Furfaro, Vice Chair, and Councilmembers. This is actually the final report of the project that was funded for the Fiscal Year 2012. I wanted to give you a report on what the outcomes that visioning sessions have been. As George mentioned that Culture and Arts is one (1) of six (6) clusters that is included in the CEDS report, that Kaua'i Economic Development Board put together. OED, the Office of Economic Development, provided funding to KPAA to do a visioning session that was designed to have three (3) particular tasks.

The first one (1) was to really work with Garden Island Arts Council and other partners within the Arts & Culture sector to plan for an Arts & Culture facility. That was one (1) of the priorities that had been included in the CEDS report and then to plan, facilitate one (1) or more visioning sessions regarding a facility, and to create some strategies for collaboration and capacity building that might be needed before undertaking development of that facility. In order to get started, we wanted to get a sense of what were the facility needs that the various groups within the Arts & Culture sector had? In September of 2012 we did a survey that was sent to seventy-nine (79) groups. I have to tell you, the sector is a little hard to identify. There was no centralized listing that we could find so we pulled together all the various lists that we could to locate and asked people who were we missing? So, that is how those seventy-nine (79) groups were determined. Of the surveys, twenty-eight (28) responded. We sent it out by E-mail, where E-mails were available. We also provided it in hard copy for those who did not have E-mail. Of

those that responded everyone was interested in planning for a shared facility and that was great news to us. In further delving into sort of a status of those organizations, we found that only three (3) of the groups have paid staff, twenty-four (24) had no paid staff. They really relied on volunteers primarily. We also asked them what kind of events are they planning where space would be needed within the next five (5) years? Their primary needs were for space for classes, for meetings, and for demonstrations. When we asked if they could pay for the space that they would be using, twelve (12) said, yes, depending on the cost, three (3) said, no, they really could not afford to pay any rent, and twelve (12) said that they were not sure.

In trying to really examine the responses we got and try to think of what does this really mean if we are planning a facility and it is unclear if people really would even be able to cover costs of using a facility? We came to some early conclusions that then we were going to test out in some visioning sessions. One (1) was that most groups rely on volunteers, that their financial capacity would limit their ability to cover the cost to use an Arts & Culture facility, and that the idea of having a facility that would be self-supporting, might prove not to be possible. We found that the primary space needs that they had for classes, for demonstrations, for meetings, were not really specific to Arts & Culture; that it could really apply to any group. So, we ended up holding three (3) visioning sessions with everyone, all seventy-nine (79) groups invited. We held three (3) session in November and December of 2012 and then the final one (1) last month in January. In those discussions, we found that most of the space is needed really only on an occasionally basis. A lot of them offer, for example, two (2) theater performances a year. They do not need an office all the time. They might need an office during the time that they are working on that performance and so office event space is needed only occasionally. Many have already found some kind of a performance space with willing supportive landlords and I have to tell you that they were very appreciative of the support that they have received from commercial property owners who have provided them with space. But we did find there was some very pressing needs. One (1) thing that is really not available in the community is a multi-purpose space that would accommodate between two hundred (200) and three hundred (300) people and could be used for performances. But not just that, it could also be used for other events at affordable rates. They were interested in some kind of space where the seats could be movable, could be removed if possible so that it really could be configured to meet the need of the particular event. There was also a need for classroom space and workshop space at affordable rates. While the hotels certainly have space available that could be rented, most groups in fact, just about every group really said they could not afford that. There was also a desire to have available some kind of shared office space with equipment that they could use on an as-needed basis. They would not need it twelve (12) months of the year, they might need it one (1) month of the year. So, if there was some kind of space available that they could rent just during the time they needed it, but where it would already have a copy machine and maybe a computer or the kind of basics that an office would have that would meet their needs. One (1) of the things that certainly was included in the CEDS report and was reiterated many times during the visioning sessions was the need for an online calendar of events so that they could not only market their programs but where they could have a calendar where they could book their programs far in advance. One (1) of the things that is happening is organizations are booking on the same weekend, the same date, and so there were conflicts where the audience has to choose. Do I go to this or do I go to that? Ideally, they would be able to avoid such conflicts if there was a place they could look and see if that date was already taken.

There was a question that arose during these visioning sessions, that came to light in the second session actually. We were using the term "the Arts & Culture community" and finally someone in the group said, "You know, there is no community." There is no Arts & Culture community. There is no "we." We operate very independently. We work hard to do our own thing. We have this dedicated volunteer group and we have our dedicated Boards, but we almost never work together and that sort of took me aback. I thought, okay, that is very telling, in if we are thinking about the development of a facility, you really cannot work together collaboratively if you do not have a sense of "we." So, one (1) of the things that began to emerge is the need for more dialogue and collaboration among the various groups so they could build their relationships, their cooperation, and their trust in one another. Also when they were talking about the use of facility when they recognized that right now is probably not a great time to build a new facility for them, they really were very focused on the concept of sustainability and said, "Let us really think about repurposing and using existing space to meet our needs. Let us not think about building something new. How can we take something that already exists and use it to meet our purposes?" Though it is not stated here in the presentation, I did want to acknowledge that we recognize that there are a number of things that are already in development in the community that are providing space. There is the Filipino Cultural Center, there is the facility in Kilauea that is being developed, and Kaua'i Community College (KCC) is developing something additional space in their Performing Arts Center. So, the question really arose whether or not we need anything new or can we just really draw on what already exists in the community for the present time? Related to the online calendar, there was a lot of discussion about that and in talking with Nalani Brun in the Office of Economic Development, she really stated very clearly that there is an online calendar that can be used exactly for this purpose. It is kauaifestival.com and while it has "festival" in the name, its intent is to be for events as well. So, we provided information to the group about that and there may be a need for a little tweaking of that site to better meet the needs of the different groups and accommodate the kind of events that they are doing. But that is something that is already ongoing, is already managed by someone in the Office of Economic Development and would require no additional funds.

The next step in this process is to not focus on the development of a new facility and a feasibility study as was initially envisioned. But instead, to really expand the CEDS Art & Culture pod, which is what they call it rather than working group, so that we can build more dialogue and more collaboration and start developing this sense of community. There was a desire to have training and technical assistance available to the organizations and groups. It was very clear to them that workshops were not always the answer because it was not convenient to their schedule. So, there might be ways of offering webinars, for example, that they would not even have to leave home or the training would have to be offered at times that were very convenient to their schedules, which often they have in late afternoons, for example, they offer classes and workshops. The idea of a center would be something that would be revisited in the future. But in the next few years does not seem to be on the top of their list for something. I think leadership has to be developed within that community. Once it is developed in order to really support the development of such a center. That is the report and I am very happy to answer any questions that you may have.

Ms. Nakamura: Thank you very much, Diane. I will open it up for questions? Members, did you have a...I think the final report was submitted. I just wanted to say that the list of the groups that you contacted, I think was just

good to see that you really went out and tried to reach a diverse group of Arts & Cultural organizations on this island and it is good to have this information in one place. I wanted to ask you, did you get a sense from the group that they wanted to coalesce and try to work more together?

Ms. Zachary: Certainly of those who participated they do.

Ms. Nakamura: They do?

Ms. Zachary: They could see that there could be value in doing joint projects, for example...joint marketing. But right now they just do not have that really that sense of being able to do that.

Ms. Nakamura: Did you get any sense of them seeing any synergies between this vision and the Filipino Cultural Center that is proposed in the heart of Puhi?

Ms. Zachary: We have the participation of Sonya Topenio and Lester Calipjo at a couple of the meetings. We asked them to present their plans and then John from the Small Business Development Center, who is working on a feasibility plan for them, also participated in two (2) of the sessions. It is possible there is a synergy, but because they have not really decided exactly on their direction and what they are planning to do, it is hard to know. They made it clear that they are looking at one (1) large banquet space that could be subdivided into different rooms. One (1) of the things that the groups said is very important to them is that if they booked a space, for example, many of them book a year in advance for a space so that they have a space. If they booked it, that the space would be available for them on that date and they not be bumped. That was something that had not been considered by the Filipino Cultural Center. So, I think there are a number of issues that need to be looked at. But that still offers potential.

Ms. Nakamura: And then when some of us went to look at the Maui Cultural & Arts Center and talked to management there, one (1) of the things that they said is that the most popular facility there is really the classroom space. It seems to coincide with what the people of Kaua'i are saying. They just need someplace to hold classes that our community centers are really bursting at their seams. They are so well used that new organizations cannot find the time to offer a class. So, I think it also goes to just the community need to expand and look at alternative recreational centers. It seems to tie into that.

Ms. Zachary: If I might make a comment related to that. It certainly not unique to the Arts & Culture community. If you asked about any non-profit organization, they scramble for meeting space and particularly a space that holds between fifty (50) and one hundred (100) people. It just does not exist, except for the Convention Center which has problems with acoustics.

Ms. Nakamura: Right.

Chair Furfaro: Sorry, she said a problem with what?

Ms. Zachary: Acoustics.

Ms. Nakamura: Councilmember Yukimura.

Ms. Yukimura: Thank you for your report, Diane. As a basis for the CEDS report, was there a needs assessment done of the Art & Culture community before the need was articulated as a direction in the CEDS report?

Mr. Costa: Let me complain that. Interestingly enough, in 2009 is when we started the update of the CEDS process and we formed focus groups of the six (6) emerging clusters. We gathered members of the Arts & Culture community at the time and now looking at Diane's list it is obvious that five (5) years have flown by and we are getting ready to update the CEDS again. So, at the time we updated the current CEDS, 2010-2015, in the focus groups the need for a common facility was one (1) of the driving factors of putting this study together. Interestingly enough as Diane went through this study, the driving factor was looking for a common facility, not only for Arts & Culture, but also for sports and recreation. What is interesting to see is that out of this discussion came well, maybe we do not need the facility right now, maybe the focus needs to be collaboration and more meeting space. That is kind of where we are right now. But it is in the CEDS in this current year's current plan, to look at a facility to bring Arts & Culture groups together.

Ms. Yukimura: I mean because given the decentralized nature of our island and our desire not to cause more transportation than necessary, there is a certain logic to localized facilities, you know? So, having one (1) facility in one (1) place of the island where everybody comes to from all the areas may not be the best design to meet the needs. Your research has shown that there are some regional facilities that are self-evolving, so to speak, out of those needs like the Kilauea pavilion and even the Kaua'i Filipino Cultural Center which would be more a Lihue facility even though it would also be an island-wide facility, too. Then let me also say that this digital media center that was separately considered, it would seem to me there is going to be some meeting space in that facility as well. So, this all kind of directs us to a non-centralized thing which seems like it might meet a lot of these needs anyway.

Mr. Costa: Interestingly enough as we work on these different emerging industry clusters like the Sports and Recreation, we were just here a few weeks ago about the inventory of events that take place on the island and as we looked at Food and Agriculture, we are seeing...one (1) of the CEDS project is commercial kitchens. So, as we take inventory of all these facilities throughout the island, a common denominator is like with commercial kitchens is great we have commercial kitchens on the island, but is there a meeting room facility where people can be trained similar to Arts & Culture? If is there a venue that we can put on an event likewise does that facility have additional meeting space to accommodate these Arts & Cultural groups? What we also need to take into consideration as we are into the tenth year of the CEDS originally developed in 2004, our population has grown. So, some of these meeting spaces and some of these facilities that maybe ten (10) years ago were adequate, we are now finding as the population is growing they might be not able to accommodate what we need.

Ms. Yukimura: Well, in that light, I think especially we need a large Cultural and Sports Performing Center. I look at the Convention Center with one thousand one hundred fifty (1,150) seating in the auditorium, that was built...is it almost fifty (50) years ago now? Back then, fifty (50) years ago when our population was thirty thousand (30,000) or less and it was basically an agrarian/plantation society, it was amazing that we built that Convention Hall. It was a visionary facility. I think we are at the next level now where we need an

enclosed Sporting and Cultural Facility and I think that will meet on economic need as well as culture and arts and sporting needs. So, it seems to me that one (1) area we might want to focus our energies as a County is on that planning, on planning for such a facility because I think that will meet a lot of our goals in the CEDS plan. So, what is the stadium capacity right now? Our present Līhu'e Stadium? Four thousand (4,000)? Yes. I think with our population now is sixty-seven thousand (67,000) with a de facto population, so that is visitors of about twenty thousand (20,000), twenty-five (25), twenty (20).

Chair Furfaro:

Nineteen thousand eight hundred (19,800).

Ms. Yukimura: Rounded off to twenty thousand (20,000), sixty-five (65), eighty-five thousand (85,000), right? I think we need to start planning on that. You say that capacity building was identified as a major priority for culture and art sector, which is on page 5 of your report. Suggested training topics were marketing, project management, intellectual rights, financial management, and board development. This is not just culture and arts need. This is small business needs. This is farming needs. So, I would not want to do a training needs assessment that is only focused on culture and arts. I mean, it is a need we saw that is combined with the commercial kitchen. You know, we saw that facility, the gateway facility in Kalihi, which has all of this real diversity of commercial kitchen facility, some baking, some cooking, and cold storage and dry storage, which really addresses the need for commercial kitchens. But then they have all of these classes for labeling, food safety, you know, that make a lot of sense and really does equip the entrepreneur, the beginning entrepreneur. So, it seems to me we should think a little bit bigger than just culture and arts training needs because I think there is a large overlap. What are your thoughts on that?

Ms. Zachary: Well, KPAA has offered training for non-profits for several years as we get grants that will allow us to do that and while I absolutely agree with you that some of those topics are relevant to many other organizations, there is some value in offering at least a portion of them to uniquely the arts and culture community if the intention is to really build a sense of collaboration among those groups. If they are going to be work together more, perhaps do joint projects, they need to have opportunity of being together and then the examples that are given, for example, in the workshops themselves are very specific to the kind of issues faced by those groups. So, I could see both things happening, but I guess I would hope that there be some opportunity for workshops that are very unique to that community in order to make it stronger.

Ms. Yukimura: Agree, but I do not know if a needs assessment is the way to go because you could take somebody who is somebody familiar with marketing and you could take the people from the culture and arts group and do a marketing workshop and sometimes it might be mixed clientele. But I do not know that you would have to assess needs.

Ms. Zachary: Does it say in here that we are going to do a needs assessment?

Ms. Yukimura:

Yes.

Ms. Zachary: It would be relatively informal. We have already assessed to a great degree the kinds of things that they want, but it would

be more reaffirming the kinds of needs that have been identified already. It would not be a comprehensive, elaborate survey.

Ms. Yukimura: We have such limited resources, I think we have to really think about how we use them. Then I also want to say that I heard on public radio that on the Big Island they are doing some kind of artists networking that allows artist to both market and it is also an artist map on the island, so where different types of arts can be found and I thought it might be worthwhile for us to follow-up and find out what they are doing. It seems like it might be a useful format to look at. It seemed to be meeting a need of artists because if they do not...well, I guess a small group saw the need to come together. I am not sure exactly what kind of collaboration is needed and except it does seem like a calendar collaboration and then tying into existing calendars makes a lot of sense. I know that the Garden Island Art Council has a calendar too and I do not know if how they intertwine or not. Anyway, I guess I am looking for places where there is a natural need where they would come together and support for that.

Mr. Costa: Well, presently Nalani Brun works closely with Carol Yatsuda. Carol actually E-mails us her calendar and we try to dovetail with the kauaifestivals.com websites. As Diane mentioned we are not booking events on the same weekend where people have to choose. Sometimes it is impossible to do because you might have an event on West side and something on the North shore, that obviously would cater to those regions. But, as much as possible, try to dovetail all of the events into one (1) calendar.

Ms. Yukimura: Well, as one (1) who has tried to schedule event, I think it is impossible almost to find a free weekend or something like that and again sometimes they become localized, sometimes there are huge events that really do conflict. But the other value of the calendar is that visitors and others who want to go to these events know that it is happening, right, and they can go to a place where they get all of the basic information. I mean, it would be, I guess, in our visitor surveys we could ask whether that is an issue for our visitors. For me, I would go to the Garden Island Arts calendar.

Mr. Costa: Right.

Ms. Yukimura: So, there must be some ways to really pull these together pretty easily.

Mr. Costa: In my experience, and I am sure Chair Furfaro would agree, the resorts and even condos that have a small activities desk, their concierges are very in tune with the various calendars, Garden Island calendar, and kauaifestivals.com so, they direct a lot of our visitors to those site. I think our visitors have a lot of information and maybe sometimes more than we would like them to have, you know in certain areas. But the Visitor Industry does a pretty good job in communicating that to the visitor. Sometime it is our local residents that might not be as informed. Maybe that is where we could find opportunities.

Ms. Yukimura: Thank you.

Ms. Nakamura: Are there any other questions for Diane and George? Just to respond, Councilmember Yukimura, to your concerns. Part of the approach to the CEDS planning is that we identify these industry clusters and it is

based on the thinking that what makes for successful industry clusters. If you look at the North Carolina Furniture Industry or Hawai'i Visitor Industry is not just the vertical integration of the industry around this, but the horizontal integration and so it is combining those and looking at what the common needs are, the networking opportunities, the ability to do worldwide marketing all of these things that strengthen the industry and build good jobs on this island. That was the whole intent was to make this one (1) of those emerging job clusters where you could have because it is so consistent with the values and what we are trying to promote on this island. What makes us so different from anywhere else is our Arts and our Culture. I think the whole thing of trying to strengthen this industry is really the basis of the plan and in these six (6) areas, especially. So, anyway just wanted to provide that background.

Ms. Yukimura: Right and I agree. I think the identification of clusters is an excellent thing and asking the question how do we strengthen these clusters as viable businesses is a really good thing. For me it is not yet answered clearly about what will strengthen these clusters, you know? What I liked and I only heard it driving my car and listening on the radio about the artists network that they are building is it was a way of identifying where they are and then both in terms of type of art and whether it is sculpture, or wood products, or visual arts, or performing arts and where the studios were if people wanted to visit them and their internet connections if people wanted to buy products or get on their websites. So, it was a marketing thing that could be done, I guess, basically with software and using the new technology to connect artists and boost their sales. You know, to me that was clearly a way to strengthen them and we should ask them if that is actually happening, you know? But I think that kind of really careful needs assessment maybe...and then the overlaps, because I think there are so many overlaps with digital media...

Mr. Costa: A lot. The Food and Agriculture, the Sports...

Ms. Yukimura: Right and that is why to only...otherwise they become silo. So, how you keep going back and forth to the clusters and then looking out again at the different clusters and how they can interact or what their common needs might be because then have you some economies of scale.

Ms. Nakamura: Thank you. If there are no further questions, I want to thank Diane. Thank you, George, for overseeing this project and I know there will be more happening in the coming year.

Mr. Costa: Thank you very much.

Ms. Zachary: Thank you so much.

Ms. Nakamura: So, if there is not further discussion...oh, there is? Councilmember Kagawa.

Mr. Kagawa: I have no questions. But I wanted to thank you, Diane, for the report and George, *mahalo*, for doing a good job on this report, for reaching out to a lot of the people doing the culture and arts. I am sure there is probably, you could double the page because I do not see names of hula teachers that I know that are not listed. But it is just that many groups that we have going on in Kaua'i. We have a lot of them. Some of them are large and some of them are

real small. But we need to, I think, as a community, as government, we need to look for alternative way for the future of Kaua'i to generate revenue and these are the types of things that we need to look into and not only talk about it. But we actually need, like Councilmember Yukimura said, we need to invest and have that facility so question hold something like a Merry Monarch on Kaua'i that would generate the kind of revenue that would make it worthwhile for everyone. Then we can have the businesses buy in. But it is thinking about the future, planning ahead, that we need to do you know We have got troubles with the Federal Government, with the sequester coming upon us. We cannot rely on the base forever. We need to diversify our economy and I think the sports, culture/arts that is a good way to go to boost our tourism. So, I thank you very much and I definitely will be supporting these kind of ventures in the future. *Mahalo.*

Ms. Yukimura: In your PowerPoint on slide eight (8), where you talk about shared office space with equipment use. I remember seeing recently in the Hawai'i Business Magazine, there are these high-tech places where people can come. It is like in Honolulu, if I need some office space, I could go there and rent an hour worth of time whether it is computer use or phone or whatever and that again is a generic need. I mean it is not a need special to culture and arts people and so we might look at that and it could really fit in with the digital media center, possibly. If that is in Lihu'e, well wherever it is, I guess. But anyway something like that kind of office space could really be a new business, I think. In fact, it was some young entrepreneurs that created that business space and they are renting it out. So, anyway it seems like we might look at that, recognizing that there is that need.

Mr. Costa: It is one (1) of the ideas that came up in the discussions with our commercial kitchen business incubator. The business incubator was more geared towards training for value added products in conjunction with the commercial kitchen. But also, if we had that business incubator, it would provide like a facility, a couple of offices where an entrepreneur, maybe has the marketing expertise, but does not have the actual physical facility to work out of. So, those are one (1) of the things that we have on the bucket list that we want to explore in the next CEDS. I just wanted to add, I just came back from a two (2) week vacation. My daughter lives in Arizona and we went to New Mexico, Santa Fe. I went to college as an art major and Santa Fe I feel it is one (1) of the art meccas, I guess. They have a really nice, both online and a map, that shows all of the galleries. I mean it has the listings and different types of arts, impressionist art, and so I have noted down your suggestion about some directory something like that, that gears towards the arts and culture. I think that is a good suggestion.

Ms. Nakamura: Thank you. I would like to open it up to public testimony. Would...anyone like to testify on this matter?

There being no one to give testimony, the meeting was called back to ordered, and proceeded as follows:

Ms. Yukimura moved to receive C 2013-84 for the record, seconded by Mr. Kagawa, and was carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-70 Communication (01/29/2013) from the Deputy Director of Finance, transmitting for Council information, Period 1-5 Financial Reports – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of November 30, 2012,

pursuant to Section 21 of the Fiscal Year 2012-2013 Operating Budget Ordinance No. B-2012-736 of the County of Kaua'i: Mr. Rapozo moved to receive C 2013-70 for the record, seconded by Ms. Yukimura, and was carried by the 6:0:1 vote (*Mr. Bynum excused*).

Ms. Nakamura: Next, the Chair has requested that we take up item number seven (7) on page 3.

There being no objections, C 2013-89 was taken out of order.

C 2013-89 Communication (02/06/2013) from Council Chair Furfaro, requesting the presence of the Director of Planning to provide the Council with an update on the Transient Vacation Rental (TVR) Enforcement Initiatives of the Planning Department.

Ms. Nakamura: Was the Planning Department notified that this item would be taken up early? Then we are going to need to notify them and we will carry on with the next item.

C 2013-85 Communication (01/31/2013) from the Executive on Aging, requesting Council approval to receive and expend State of Hawai'i, Department of Health funds in the amount of \$1,650.00 for lay leader training, monitoring/fidelity training, and an update training of newly revised Stanford University's Chronic Disease Self-Management Program (CDSMP) manuals for leaders: Ms. Yukimura moved to approve C 2013-85, seconded by Mr. Rapozo.

Ms. Nakamura: Any discussion?

Ms. Yukimura: Just to say it is always nice to receive these applications from the Office of Aging or the Agency on Aging in our County because they do such good work and you can always rely on them to have planned it well and thought through it, thought the through their programming well. Thank you.

Ms. Nakamura: And rely on best practices. Would anyone from the public wishing to testify on this matter?

There being no one to give testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2013-85 was then put, and was carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-86 Communication (02/05/2013) from the Prosecuting Attorney, requesting Council approval to change the use of funds from the State of Hawai'i, Department of Human Services, Office of Youth Services, Juvenile Accountability Block Grant (JABG) Program in the amount of \$18,694.00, from the Keiki P.O.H.A.K.U. Program, to Kaua'i Teen Court: Ms. Yukimura moved to approve C 2013-86, seconded by Mr. Rapozo.

Ms. Nakamura: Discussion?

Mr. Kagawa: I just hope that maybe I could have asked some questions. I want to make sure that it is not a political reason why he wants to move the funds. I want to make sure that the reason why we are moving it is

going to be better for our kids. If that is the reason is. But I have no problem if we have the votes. I have no problem going along with the majority. But I will send out a letter on my behalf to make sure that is in fact the case. Thank you.

Ms. Nakamura: Thank you. Any further discussion? If not I would like to call for public testimony?

There being no objections, the rules were suspended to take public testimony.

GLENN MICKENS: I just have a short comment on this. I have no problem with this request. But I would remind this Council how we spent maybe thirty (30) hours on funding for a P.O.H.A.K.U. grant in past meetings. So, I would suggest that we at least be consistent in our handling of the grants prior to the scrutiny of the one (1) P.O.H.A.K.U. grant I saw nothing but rubber stamping of past grants. So, again I would recommend that we use consistency how we handle all of these. Again, I have no problem with this particular grant. But you guys all remember how long...how many hours we spent day after day on the P.O.H.A.K.U. thing. So, I think we have to have consistent. Thank you very much.

Ms. Nakamura: Thank you, Glenn. Anyone else who would like to testify?

There being no one else to give testimony, the meeting was called back to order, and proceeded as follows:

Ms. Nakamura: We have a motion to approve, any further discussion? Councilmember Yukimura?

Ms. Yukimura: Yes. In response to Mr. Mickens concerns which I believe are legitimate concerns, I want to say that the Teen Court Program, unlike the P.O.H.A.K.U. Program is a very well established program both nationally and in the State and it is a best practice program as well. So, it is a little bit different than the P.O.H.A.K.U. Project, which was a brand-new one (1). I actually supported the purpose of the P.O.H.A.K.U. Project, which was early diversion and I hope that we can still look at some of those kinds of new innovative programs as well. But I think that the Teen Court is an ongoing program that needs this kind of support. So, I am happy to vote for it. I do hope that, I think Council Vice Chair Nakamura during the previous discussions on Teen Court asked for statistic reports and I presume that it is part of the grant requirements and that we should get those too in terms of holding anybody who gets public moneys accountable for a report back on the results. As I recall, Teen Court has a very high rate of success so this is a need. Actually one (1) of my questions is why we are not supporting young people that are eighteen (18) and over with Teen Court because I think there is a need for those kind of youth as well. In fact, there is quite an issue with youth who are out of high school, but still without jobs. So, I am hoping that we can look at an expansion of the Teen Court to those older groups for example eighteen (18), nineteen (19), twenty (20), and twenty-one (21). Thank you very much.

Ms. Nakamura: Thank you. Councilmember Rapozo?

Mr. Rapozo: Thank you. I will be speaking with Mr. Kagawa as far as the letter going out because I would expect, as Mr. Mickens said, the same kind of scrutiny. The Keiki P.O.H.A.K.U. Program was a new

program. But was an innovated program that in fact was approved back in October of 2012 for funding and then I believe that is when Mr. Kagawa you talked about the political parts, that is when it became political. Then today we are moving the funds and the Committee has supported it, so I will be supporting the action because the Committee did, in fact, support it. The problem, and I am talking about the Kaua'i Juvenile Crime Enforcement Coalition, the problem is we never gave Keiki P.O.H.A.K.U. a chance and Teen Court is a very successful program. But one (1) things that Teen Court that I am concerned about with the numbers is recidivism. They only count recurring crimes if it is the same crime. So, if a kid that gets arrested for theft goes through Teen Court and he does not commit another theft then he is considered not recidivism. But if he goes out and beats up someone, they do not count that as recidivism and so it is concerning, the numbers with Teen Court. It is a great program do not get me wrong, but Keiki P.O.H.A.K.U. was a restorative justice program. It was a program that incorporated a lot of cultural aspects to our kids which is what we have lost. Many of our kids today have completely lost touch with the Hawaiian heritage and the values and that is what Keiki P.O.H.A.K.U. was trying to install back. We never gave it a shot and if we use the argument as Ms. Yukimura talked about, because Teen Court was here and Keiki P.O.H.A.K.U. was new, we would never get new programs. So, I think sometimes we have to step outside of the box and that was an opportunity and I believe one (1) that was lost. Again, Teen Court, great program. But as we know, as we have seen the crime statistics for juveniles today, we need to start looking at new programs, new innovative ways to get kid back in touch with the *kupuna* and the land. That is what is going to keep our kids off of drugs and crime. I will be supporting it, again. The Coalition has agreed to move the money and I will be supporting it. But very disappointed that we never gave Keiki P.O.H.A.K.U. a shot. Thank you.

Ms. Nakamura: Thank you very much. Councilmember Rapozo, I would also support a letter to Hale 'Opio asking them to look at their recidivism data and to include all crimes. Not just the crime that that the teen has been charged and to use that in future reporting to the County. I think that is a very worthy request and I would also ask that Hale 'Opio or any other non-profit look at the goals behind Teen P.O.H.A.K.U., which was a culturally based program and looked at some teens who may not have fit nicely into the Teen Court Program and to look at ways that maybe to develop a new program around those same program goals because from what we heard in the discussion is everyone saying yes, there is a need for another model and based on the success of Maui, I think there are some good models to look at.

Mr. Rapozo:

May I respond?

Ms. Nakamura:

Yes.

Mr. Rapozo: The Keiki P.O.H.A.K.U. is being looked at Statewide because of its innovative structure and I believe other Counties will move to that type of program where it is getting the kids back into the community. The other thing, too, Teen Court does not cover everyone as you touched on. They will not take second time offenders and that is the gap we have got to fill. That is what that program was slated to do. So, now we have second time offenders who basically fall through the cracks and not that first time offenders do not need these programs, but we also have to catch the second and third and fourth time offenders as well because again, I cannot emphasize enough putting the violator back in the community that was violated and getting to understanding the culture and the

community and getting them connected with the *kupuna*, which I think are the best teachers. To sit down and talk to an old grandma; grandpa, aunty; uncle, to me, the kids listen better than through some Teen Court Judge or Councilmember talking to them in a nice aloha shirt. They need to hear it and feel it from the people. Thank you.

Ms. Nakamura:

Councilmember Yukimura.

Ms. Yukimura: Yes, I want to make it clear that I support innovative programs and so I did not see this as one (1) or the other. But I think there was a lack of actual planning for the Keiki P.O.H.A.K.U. and in the questions that we asked in terms of Police Department's involvement, the structure of our Police Department is different from Maui's, and there were a lot of questions of how to implement that. So, if...and that is why there were questions. So, if the other thing...well, so if either the Prosecuting Attorney's Office or a non-profit would propose a program for diversion, I think that is something we should look at. I think the issues are very much as, Councilmember Rapozo as said, in terms of culturally based programming that is well planned and well implemented can really make a big difference among your young people.

Ms. Nakamura:
Kagawa.

Thank you very much. Councilmember

Mr. Kagawa: Yes, not to beat a dead horse. But the reason why I brought up my concern is that it just...the timing about that whole discussion the P.O.H.A.K.U. versus Teen Court happened during the election. Right as it approached the final moment and it just seemed that it would work out well for the anti-Shay folks to put down her program. Now that the election is over, I just want to make sure that the program or programs we choose is best for the kids. We have some kids and students in the audience right here that they want to see something that will help their friends and whatnot who get in trouble to get back on the right track. If it is Teen Court, obviously, the consequence has to be such that they do not want to get through that again. What I have heard from some of the kids was that the consequences from the Teen Court was quite easy and if it is easy, they look at it as a joke and will reoffend normally, right? If the consequences is not severe enough then they are notice worried about going back to Teen Court again. I do not know if we need to step up our Teen Court Program or maybe it is good the way it is. But I just want to have the Prosecutor here at some point and we can ask him some direct questions regarding Teen Court or as I see a good alternative in P.O.H.A.K.U. which that tries to help in other ways more culturally based. *Mahalo*.

The motion to approve C 2013-86 was the put, and was carried by the 6:0:1 vote (*Mr. Bynum excused*).

Ms. Nakamura, the presiding officer, returned Chairmanship to Chair Furfaro.

Chair Furfaro: Thank you very much Vice Chair for covering me. I want to welcome students from Waimea High. We are delighted to have you and I understand you are going to be back at 1:30 today as well to hear what concerns come up in Mr. Kagawa's Resolution as it relates to the NOAA funding. But I also had a brief tour of the building with them and they got a glimpse of one hundred (100) years of history associated with the building. But on behalf of the Council, welcome. On the other note, members, I would like to ask you if I could a

personal moment of privilege because as you passed the Finance Report I was absent and I wanted to share some questions that I had to go over. May I be granted a moment of privilege here to go back?

Ms. Nakamura:

Sure.

There being no objections, the rules were suspended for a moment of personal privilege.

Chair Furfaro: First of all, we have five (5) months of statistics from our financials right behind us and I will be sending over the final comments before we go into budget on March 15th. I want to point out the following. It seems like we are on track for our collection of current property taxes. Our license fees are dragging for half of the year by about seven thousand dollar (\$7,000.00). That will be a question that I would like to query if we are having some problems with some of our licensees. I would indicate that our non-business fees are trailing by about one hundred thousand dollars (\$100,000.00) for this first period and I do have some concerns as it relates to interest earned on our Bond Fund money that is in there. We actually have a negative number in there and that should not be. So, I will be sending over that question as well. As we look to the internal government revenues, we have not gotten half a years TAT tax from the State. That has not hit. I am sure it will very soon. But a seven point four million dollar (\$7,400,000.00) payment is due relatively soon from the State and may have some effect on our cash flow if it turns out to be longer than say another thirty (30) days. I also want to point out that there is not any revenue coming in on our internal and other government revenues including federal moneys. I am very concerned that it might be tied to the sequester action that happens tomorrow. So, that is something else we should be keeping a close eye on. Other chargers, we have a large amount of fees now going into the Parks Department and I think it is a good time to evaluate and I think Councilmember Yukimura is looking at structuring a Bill that puts that money back into a oversight from the Council as that is a substantial amount. As well as we are short about one hundred nineteen thousand dollars (\$119,000.00) from budget. So, I have bored you with the numbers, the students are leaving. We will see you later this afternoon. Thank you. To the members, those are some of the questions that I will be sending over before we start our budget.

Ms. Yukimura:
not re-open this today. But...

Chair, it is your intention then that we do

Chair Furfaro:

I will send over those questions.

Ms. Yukimura:

Thank you for the head's up.

Chair Furfaro: If you want to look, we have the financials located next door on the desk. Okay, next item.

There being no objections, the meeting was called back to order, and proceeded as follows:

C 2013-89 Communication (02/06/2013) from Council Chair Furfaro, requesting the presence of the Director of Planning to provide the Council with an update on the Transient Vacation Rental (TVR) Enforcement Initiatives of the Planning Department.

Chair Furfaro: Okay, the Planning Director is here. Mr. Jung is here. Looks like he just got off a plane with all of your luggage. Did you just get off, or is that the file?

There being no objections, the rules were suspended.

IAN K. JUNG, Deputy County Attorney: Those are files for you guys to review in case you have questions.

Chair Furfaro: I hope we get to review them by a way of a briefing.

Mr. Jung: We can certainly do that.

Chair Furfaro: I do not think you intend for me to read four (4) box of records. To the Planning Director, thank you for being here. I suggested your presence again to give us kind of an update where you can based on enforcement initiatives.

MICHAEL A. DAHILIG, Director of Planning: As the Council is aware we are ordered by Ordinances 864, 876, and 904 which I guess have been codified as part of Ordinance 935. But we still refer to these historically as 864, 876, and 904 to essentially implement a Transient Vacation Rental enforcement and permitting program for the County. There are two (2) bucket of permits that the Department is aware of. One (1) is those that are within the visitor destination area and those that are without. The area that gets a high degree of scrutiny with our Department is with those in the outside of the VDA bucket. With those particular permits, outside of the VDA, again there are two (2) classes. One (1) is those that are on agricultural land and those that are not. The Council, in passing the late law created a process by which those that sit on agricultural lands are essentially required to obtain a 205 special permit to continue operation and to try to prove their grandfathered use. So, in the enforcement of those TVRs our primary focus has been specifically with respect to those outside of the VDA because the law requires that those are within the VDA to file perfunctory information with respect to TAT tax, GET tax and those types of things. That is all that is required.

At this point with respect to enforcement, and I know enforcement has been a constant discussion that we have had with the Council as well as the Administration on how best to approach enforcement. We are aware of the general sentiment amongst the body as well as the Administration, that the impact of transient vacation rentals outside of the Visitor Destination Areas should be minimized at all costs and that heavy scrutiny should be given to those outside. The rub for our Department with respect to engaging in a more broader discussion about the nuances of our particular enforcement strategy is that at the end of the day this will end up in some degree of contested case hearing or litigation to the County. So, there are certain strategies that certainly we would like to keep outside of public knowledge. But there are certain things that can I discuss from a budgetary standpoint in terms of what is and what is not working for us. I know that...and we have very well aware of the three hundred thousand dollars (\$30,000.00) to the Department by this body to augment Transient Vacation Rental enforcement efforts. This past July we took a look at how to best utilize those funds from an enforcement standpoint and the difficulty that we encountered with respected to being able to contract out the enforcement of the Ordinances came as a consequence of the actual complexity that the Ordinances do provide. It is very

evidentiary, it is very complex set of requirements that we need to from an enforcement standpoint be able to build a record on. As many of you well know, to bring enforcement to full fruition, we need to have certain degrees of evidence and reporting available and the ramp up to have external staff be proficient and being able to implement those Ordinances would have essentially eroded at the amount that was appropriated by the Council. So, we felt at that time from a budgetary standpoint it was not appropriate for us to be whittling down those funds and essentially not getting the bang-for-the-buck type of situation. So, we looked at instead at using those moneys to augment internal staff/internal efforts and try to create partnerships between the Police Department as well as the Prosecutor's Office on helping assist our staff and train our staff to be able to be up to a level that could provide the evidentiary support necessary to bring these enforcement cases to full contested case hearing in the event it should arise.

Chair Furfaro: Hold on just a second, for the Director, let me summarize what I think I am hearing. But may I follow what I think is going on over in the Planning Department and use Coco Palms as an example? Permits were issued to Coco Palms. Those had a timeline with them and had criteria that they had to meet, right?

Mr. Dahilig: Yes.

Chair Furfaro: But it is not just as easy as revoking the permit. You have to start another process which takes the rationale down on the rationale to justify the revoking of the permit.

Mr. Dahilig: That is correct.

Chair Furfaro: So, now I do not think I am revealing any top secret information. But we have about ninety-one (91) of these TVRs that have failed to comply with process for renewals and continue operations. They have been cited, that a concern there? Yes or no?

Mr. Dahilig: We are in the process right now, some citations have gone out.

Chair Furfaro: Okay.

Mr. Dahilig: The bulk of them are still being processed. But about a third have gone out with respect to issues with compliance of the Code. So, they are being rolled out as we speak.

Chair Furfaro: But that would be a requirement to give them notice that there is some action being taken on avoiding their current permit because of lack of compliance.

Mr. Dahilig: I would not go so far as to say "void." But to bring them up to speed that there is a problem with their current, I guess, authorization to operate and that until they resolve that issue, they cannot continue that use.

Chair Furfaro: But whatever that compliance issue is, you have to give them notice that they have to resolve it and the consequence is?

Mr. Dahilig: The consequence is that I can make a determination to seek an order to show cause before the Planning Commission to trigger a contested case hearing, to then revoke the potential permit, which is then potentially appealable to the 5th Circuit Court for issues of due process.

Chair Furfaro: Which is similar to the model I just went through for the Planning Department's actions with Coco Palms right now?

Mr. Dahilig: That is correct, Chair.

Chair Furfaro: So, it is the same model almost?

Mr. Dahilig: Yes.

Chair Furfaro: But it is ninety-one (91) individual times or one hundred ten (110), whatever that number is, right?

Mr. Dahilig: That is correct.

Chair Furfaro: So, you have to build a case to prove their non-compliance and because of that, you know, you have given a third of them notice already, those are the portions where you think should only be handled in Executive Session, that strategy?

Mr. Dahilig: In terms of...

Mr. Jung: I think Mike, hold on. I think we are starting to lead into areas because of the notices that went out. We have had indications from at least seven (7) of them that they do intend to appeal the Planning Director's decision either on an interpretation of a provision of the Ordinance or under a constitutional challenge of the law itself. So, I think I want to hesitate on having any open discussion on what the law says and what the Director's interpretation of the law is until we hold those contested hearings.

Chair Furfaro: Well, first of all it is how you interpret the law that you do not want revealed because we may go to Court.

Mr. Jung: Correct.

Chair Furfaro: Understood.

Mr. Jung: If I could compound real quick on the process. There is the OSC process, but there is also a process to appeal the decision of the Planning Director and it is incumbent upon each owner to follow that process. I do not think we should have Director Dahilig giving legal advice to those who may be watching on that process because there are certain timelines attached to such a filing and if we provide that information as well as the rules to them. But we do not want the Planning Director interpreting what those rules say and how to do their case should they wish to appeal.

Chair Furfaro: I will stay away from asking him to interpret anything. But I will not stop asking questions of how are we going to get to what the Bill clearly states is our ability to have some natural attrition in the number of units because they failed to comply to the law.

Mr. Jung: Understood.

Chair Furfaro: That is my prerogative. I am saying when you feel we have breached any of those questions then you, in representing the County, which is the Planning Director and myself, and this Council body, you are more than welcome to raise your hands. I will continue to ask the questions to say how are we giving these people notice? The fact of the matter is we gave you money to have people go out and take a look at them and share issues with them. You have chosen to use the monies on something else. So, we might have to have a session on staffing during the budget hearings. Are you satisfied with my questions and why the direction?

Mr. Jung: Yes, sir.

Chair Furfaro: Okay. So, we will use Coco Palms as kind of the model, but on a much smaller scale. Okay. Mr. Rapozo, you have the floor.

Mr. Rapozo: Thank you. The big difference between Coco Palms and TVR is Coco Palms permits expired. They applied for the permit and they are expired. We are talking about TVR permits that were either fraudulently approved, right? We gave permits to residences that did not have use, had illegal construction, and are in flood zones. I mean, it is a completely different animal and how many orders to show cause have we issued?

Mr. Dahilig: We have not been able to issue anything.

Mr. Rapozo: We have not issued any orders to show cause? When did that Bill pass?

Mr. Dahilig: The latest one (1), 904? I am not sure.

Mr. Rapozo: The one (1)...and I feel for Mr. Furfaro and the Councilmembers that supported that Bill because obviously I was opposed to it. But they put up a very good argument that this was going to begin the attrition and we are years later and it has not done that. So, it makes the Council look bad because I believe that Bill, in fact, came over from the Planning Department. If I am not mistaken. I do not think it was introduced by the Council. It came from the Planning Department.

Chair Furfaro: You are right.

Mr. Rapozo: It came from the Planning Department and said, "This is what we want" and the Council battled and battled. I was not on the Council at time, but I testified on numerous occasions it would not work. But the Planning Department said, "We need this tool, we need this and now we can start going after them. We can start to watch the reduction," and it has not happened. It is extremely frustrating for me. You talked about training, Mike. Your people were already trained in process, in the legal requirements on report writing and I know that for a fact that. They were already trained by the prior Administration. I know that for a fact because I was working there when the training went on. So, to sit here to say we will use that money and we are going to change up and train them, they have already been trained. It has come down to and this is going to be a question. Does the Planning Department have the political will to go after these violators? It is in the blogs now. The blogs are written as public record and they

have done the investigations. I have sent over numerous investigation requests, Mike, and you have responded that we sent the cease and desist. Then what? In the meantime these people are allowed to operate and not allowed because we sent them a paper that said you have to stop. They have ignored it. They are ignoring our requests. They are saying do not worry because they are not going to do nothing and we have not, not one (1) order to show cause. Why? Why have we not taken that next step in making them understand that we are serious about this? Why?

Mr. Dahilig: Well, as far as my recollection is, the legislation that actually did pass the Council, the first step in our Department being able to implement that legislation was actually not enforcement. The first step of that was actually to call those that were agriculture TVRs and those not agriculture TVRs and in terms of my Office resources I had to deploy and redirect my Department's staff to focus on approximately sixty (60) agricultural TVR special permit investigations.

Mr. Rapozo: I will stop you right there only because I do not want to hear the term "resources" because we gave you the resources, we gave you the money for the resources. So, please do not use "resources." We gave you thirty thousand dollars (\$30,000.00) to hire, to go out and enforce TVRs. You chose not to use the thirty thousand dollars (\$30,000.00). So, please do not say "resources" because that is not accurate.

Mr. Dahilig: Respectfully, Councilmember, I guess in terms of being able to discuss how that thirty thousand dollars (\$30,000.00) as a resource is in the broader context of the broader question that you have been asking me to answer with respect to overall enforcement of Ordinance 904. Especially since the adoption of that Ordinance the provision of thirty thousand dollars (\$30,000.00) was only provided eight (8) months ago and with respect to being able to deploy that money in a means that best provided the most enforcement for the least amount of cost was something that I had to weigh and make a was only provided eight (8) decision on.

Mr. Rapozo:

Mike...

Mr. Dahilig: I want to be clear on this, that we have not necessarily chosen not to use the thirty thousand dollars (\$30,000.00). We are using the thirty thousand dollars (\$30,000.00) in an enforcement manner and we have a plan for that. But given the sensitivity of that how money is going to be used it is something that I would not like to reveal in public session because I think it may provide us some weakness in being able to bring these cases to fruition. I will be very clear that we have and intent to use the thirty thousand dollars (\$30,000.00) for enforcement. But in the broader context of the questioning as with respect to what we have been doing? The thirty thousand dollars (\$30,000.00) was not there at the outset of the adoption of Ordinance 904. 904 required a time period that my Department had to process almost sixty 205 special permits which are commissioned permits. So, our resources were directed there to meet the compliance requirements of 904 first. So, that is why in terms of being able to ramp up quickly the instructions that were required as part of the special permit processes and ramp that down and ramp up the actual enforcement beyond the special permit requirements, as set forth in Ordinance 904, that is what you were seeing is a trade off and is deployment of the staff. When the thirty thousand dollars (\$30,000.00) came into the calculus there was a juncture for us to have a

decision whether to contract out for the services or augment our own enforcement efforts in house services. I made the call that it is pretty clear the Council wants probably the more bang-for-their-buck on this. I will go that route with respect being able to augment the services rather than contract it out because based on some of the quotes have I gotten with respect to contracting out the work, my estimate is that you could probably only chase one (1) to two (2) TVRs at most with that money. That is why I said, okay, I think that would not be in their best interest.

Mr. Jung: I think at this point, Mike, I would hesitate to reveal any type of enforcement strategy. The only reason is there is a layered process to this. When you look at OSCs it is a different...there is an Order Show Cause.

Mr. Rapozo: No, that is fine Ian. We do not have to go into OSCs. But I want to discuss the funds because were you not here at the budget?

Mr. Dahilig: Yes.

Mr. Rapozo: Were you not here when we all agreed what we wanted the funds for?

Mr. Dahilig: Yes.

Mr. Rapozo: So, why would say that you felt that the Council would want more bang-for-their-buck? We told you what you wanted. We did not tell you to hire a contracting private investigative firm. We said two (2) retired Police Officers on eighty-nine (89) day contracts. That can be done relatively quickly. That is what the Council said we wanted and that is what you agreed to. Then to come back now and say, I thought I kind of know what the council wanted a bigger bang-for-the-buck. We never mentioned one a private investigative firm. We never did that. We mentioned two (2) retired former cops that had investigative skills, report ready skills that could be picked up on eighty-nine (89) day contract which could be done in days. In September we get a response from Gary Heu, September 20th of 2012, that is about six (6) months ago and it says that the Department has not hired temporary assistance from the inspection funds appropriated. Given the size of the funds our Office has done a procurement to you professional services to rapidly spend down the amount. We are currently in discussions with the Kaua'i Police Department concerning potential arrangement to utilize off-duty Police Officers or retired Police Officers to assist with the intended inspection rates, six (6) months ago.

Mr. Dahilig: That is correct.

Mr. Rapozo: And we were not able to do it. But now you are saying that you choose to use the money internally which is totally not what the Council asked for, without coming to the Council to the say, "We believe you guys can get a bigger bang-for-the-bucks if you use the funds." That is what bothers me. It was a Council initiative.

Mr. Dahilig: Right and I understand that. For me to say that contracted off-duty, retired Police Officers on eighty-nine (89) day contracts is not part of our enforcement strategy. I can answer that. But if I were to answer

that in public session I think it would provide some weakness in our ability to enforce.

Mr. Rapozo: I do not know what is so secretive about what we are doing. It is really simple what we said. Send some guys out, visit the properties, come back with reports, and then the Planning Department would move forward. What strategy? Really, what strategy? We are talking about enforcement. We are talking about...it just sounds like we have decided not to go after these guys and that is what is bothering me because we are a laughingstock. Again, the blogs, if you read the blogs and I do not, but it was brought to my attention and I just read the last week or so. I think we need to do something because it really does not make this County look good and it is not fabricated stuff. This stuff is coming out of records, public records, inspection records, and tax records that is are available to the public and to me we have just decided to not enforce. We need to change that picture and quick. But my question is, are we moving forward, Mike, to actively and aggressively go after these violators?

Mr. Dahilig:

Yes, we are.

Chair Furfaro: On that note, Councilmember, would you yield the floor? Just before I recognize anybody else, I want to say something and I want to say it for the purpose of everyone to understand and I will touch on it a little later. When we put available money out there for CIP, we put it the out there and the Administration can use that money in a sense of its intent unless they feel otherwise. Usually once a year at budget time they come back to modify the CIP money that we put there because they have intended to go somewhere else. The other way that they do it, while it is obvious one (1) of those things that we are going to be looking at today, is the changes in the money we put in for the Piikoi Building going to the Hardy Street Project. That is a change. That requires them, like today, to come to us with a Money Bill. So, there are only two (2) times you can change the intent. During the budget and/or with a Money Bill. Those are the rules and we control the purse strings. I guess what I am hearing from Mr. Rapozo is that it would have really made a lot more sense to us to have some of this discussion on changing money that is in the budget, changing money that is in the budget. I doubt very seriously that the Charter allows you to do it that easily and that is our point. It should have initiated some discussion based on the intent of the money we put there. Okay I will close on that. I will go to Mr. Hooser and then to Yukimura.

Mr. Hooser: Director, I was not here earlier when the prior Council actions and so I need a little clarity, if I could, on the scope of the issue. We are looking at Transient Vacation Rentals in non-visitor destination areas.

Mr. Dahilig:

That is correct.

Mr. Hooser: Some of those have gotten permits and are violating their permits and some have not gotten permits, is that correct?

Mr. Dahilig:

It could be characterized that way, yes.

Mr. Jung: I think just so interject real quick. There is an issue of whether or not they have permits or certificates, that is being litigated right now in an appeal to the Circuit Court. I would prefer that you refer to as

certificates because both myself and Director Dahilig have been quoted on open session testimony in the briefs from what I have been told.

Mr. Hooser: So, the once with certificates in effect have...or believe they are complying with the law that the Council did is in effect now. So, those are technically your legal TVRs that may not be complying with the terms of their certificate?

Mr. Dahilig: That is correct.

Mr. Hooser: Or may have filed or something like other certificate and the other group is a group that does not have certificates?

Mr. Dahilig: Right.

Mr. Hooser: So, the enforcement action we are talking about apply to both groups, is that correct?

Mr. Jung: Maybe you can answer that question.

Mr. Dahilig: Enforcement implies to both groups.

Mr. Hooser: Okay.

Mr. Jung: Let us me just caution the Council one (1) more time. There have been complaints lodged to this County about selective enforcement of zoning laws. It is a broad approach to looking at a specific complaint that comes in. It is a valid defense that can be raised about selective enforcement. If we choose which ones we are looking at, we do not want to enter that realm. But if you are asking a broad question of whether or not it is TVRs within the VDA and TVRs outside the VDA then that would be a fair question.

Mr. Hooser: So, we are going after people who are violating the law either operating a Transient Vacation Rental without a certificate or operating with a certificate but for whatever reason fraud or whatever? So, you are looking at both groups of people?

Mr. Dahilig: Those two (2) categories that we could enforce on.

Mr. Hooser: And the ninety (90) or so or one hundred ten (110), whatever that number is, those are people with certificates or those are people without certificates or a mixture of both?

Mr. Dahilig: Those are individuals that do not...that are...

Mr. Jung: I will answer. They are individuals who failed to comply with Ordinance 904 with renewal requirements.

Mr. Hooser: With the renewal requirements?

Mr. Jung: Let me just give you a broad background real quick without getting into details of the law. When you look at non-conforming uses

that had been established for Transient Vacation Rentals there is a registration process that happens.

Mr. Hooser: Right.

Mr. Jung: There are requirements for the registration process. In that registration process there are certain criteria that you have to follow to renew your permit. If they failed to do that than they were issued notices of non-compliance of a certain provision, and they vary on whether or not the provisions. But if you look at Ordinance 904, it details what you need to do and when.

Mr. Hooser: So, the group that we are talking about sending out citations or whatever, are a group of people who have certificates and they are in the renewal process and you are dealing with those people?

Mr. Jung: Those would be the ninety-one (91) for renewal issues.

Mr. Hooser: Right. So, when those renewals are annual renewals, is that correct?

Mr. Jung: Correct.

Mr. Hooser: The Planning Department does not have to renew them if they are notice complying is that correct?

Mr. Jung: That would be...

Mr. Hooser: I mean it is a choice. They come in to get their certificate renewed and the Planning Department either says yes or no.

Mr. Jung: It is a standard criteria that is set forth within the Ordinance. If they fail to comply then there is a possibility that they forfeited the use. But there are arguments they would have to raise against whether or not the registration requirements are valid or not. That is what we are going through a litigation right now.

Mr. Hooser: So, they can contest, they can say, "No, I do comply."

Mr. Jung: Right.

Mr. Hooser: You mentioned, Director, about a third of those folks have received, I believe the word as citations," is that a correct? Is that the correct word?

Mr. Dahilig: I guess...maybe I should correct myself. They are notices.

Mr. Hooser: Notices?

Mr. Dahilig: They are notices, yes.

Mr. Hooser: So, they are not citations, they are notices.

Mr. Dahilig: Within the notices is also another section that requires them to cease and desist their use.

Mr. Hooser: It sounds like, even though I know we have to treat everybody equally, it sounds like the focus is on the certificate renewal process. Is that in terms of scope of the problem in our community? Are there a lot of TVRs who are totally under the radar and not involved with certificate but still operating as a TVR?

Mr. Dahilig: Our ability to be able to quantify what is out there, outside of the realm of what is within our view, is only really in some sense dictated to us by the complaint basis that we have in house. So, when we get complaints about an illegal non-certified operating TVR outside the Visitor Destination Area, those are acted upon as a complaint. But with respect to an actual census of how many there are in that big question mark, we do not have a number.

Mr. Hooser: The discussion about investigation and whether it is a Private Investigator or an off duty Police Officer, those are mostly investigating the certificate folks who may not be complying? I guess the point is that you have talked about you do not want to reveal the strategy or what not and it seem like it is a sobriety test checkpoint or something that part of the goal is compliance and part is of catching the bad guys, the really bad guys, the repeating drinking and driving offenders in that metaphor. I do not understand why we do not want to tell the world that we are sending out undercover people and we are going to be cracking down and we are going to be doing all of these stuff and actually do it. It seems like that would increase compliance rather than try to hide what we are doing. Would you respond to that?

Mr. Jung: Yes. I will take a stab at it, Mike. It certainly makes sense that if you reveal an enforcement strategy, it is coming then if you reveal that there is enforcement by the Department to come in and really crackdown on TVRs. But if you revealed the strategy in how to do so, then that operator might then morph itself to changing its operations. In the City and County of Honolulu they have had issues. They even have gone so far as trying to regulate advertising. But the ACLU came in a proposed Bill and said, "No, you guys cannot touch advertising and try to make it a violation just to advertise." For us the advertising is prima facie evidence that we can use in our evidentiary submittals to a Hearings Officer or eventually to the Court. But when you start looking at how to address specific policies and movements and operational tactics that are going to go down when you do an investigation, I do not think that is something that you want to reveal in the public nor do you want to have discussion on the Director and their Attorney coming before a body such as you guys because that strategy may be called into question and then what we testify to may be called into question in later proceedings. So, I know we are looking at more administrative duties on how Mike is dealing without implementation of the law you guys created. But I think by holding it in open session it could potentially jeopardize our litigative strategy in moving forward on these cases. I know we have to be broad in this context. But I have literally an agency appeal that I have to file responding brief to shortly that is trying to unwind 904 and unwind some of the interpretations of the Director's decisions under 904. So, I am hesitant to have the Director make representations to you guys on enforcement strategy.

Mr. Hooser: I got it. Just one (1) or two (2) more questions, if I could, Mr. Chair.

Chair Furfaro: You still have the floor.

Mr. Hooser: Just again, so I understand this correctly because it is mind boggling to think that the County cannot find someone who is breaking the law. Instead everyone of these people have to go through a contested case hearing. It does not seem to make sense. Why does every single one (1) of these cases have to go through a contested case? Why can we not fine people?

Mr. Jung: Not everyone has to. There is a process which is in place, procedural due process, as well as substantive due process. Procedural due process we have...there is a recent case that just came out, it is the Hokulele LLC case, that talks about how due process has to be laid out under Director determinations and that is my point.

Mr. Hooser: Can we fine people that may or may not go to contested case?

Mr. Jung: We have the authority to fine people. But...

Mr. Hooser: Have we fined anyone?

Mr. Jung: On the other side, that person has the authority to appeal.

Mr. Hooser: Have we fined anyone?

Chair Furfaro: Excuse me, Mr. Hooser. Why did we not discuss that in the last posting on Executive Session?

Mr. Jung: I apologize, but I was on vacation.

Chair Furfaro: Is that the reason? Nobody else could...

Ms. Yukimura: We have one (1) scheduled, right, for today? Why do we not just go into Executive Session?

Chair Furfaro: I just want to know, it that the reason?

Mr. Jung: Sure and I will tell you the reason why. I tried to work with the Deputy County Clerk to advise I would be out on vacation and that I would prefer to be into the Executive Session. But from what I understood, the Council wanted to hold it on February 5th when both myself and Mr. Dahilig were out of town.

Chair Furfaro: You answered my question. Now Mr. Hooser, you have the floor.

Mr. Hooser: So, have we fined anyone? Has the Planning Department of the County fine anybody?

Mr. Dahilig: As I stated at a similar inquiry that we have had on this, we have made attempts to fine three (3) non-TPR violators. The actual act of levying the fine by my hand compelled a compliance with the use. We have not actually completed collected a fine. But I have levied a fine. But at the end of the day because of the issues regarding...as I mentioned to the Council, the plural nature of "requests," that that last notice where the fine was given, there was a period to still provide for compliance upon which time when the fine was going to be levied they chose to comply.

Mr. Hooser: We can you levy a fine, but if they comply we do not get to fine?

Mr. Dahilig: Yes. As I described in a previous session with the Council, there is a two (2) step process that we initiate. One (1) which is a notice and cease and desist order and then second is a second order of violation, cease and desist order as well as a fine levy. But because of the "requests" language there was a period of time for them to come into compliance. The enabling legislation under Hawai'i Revised Statute (H.R.S.) 46402, 4641.524 it places for emphasis on compliance and education versus than immediate punitive action.

Mr. Hooser: Thank you. Thank you, Chair. That is all.

Ms. Yukimura: I have always thought it was illogical that we could not make it illegal to give Transient Vacation Rental (TPR) certificates if they are illegal in any way and that seems to be one (1) of the major problems. But I feel like most of this discussion needs to be in Executive Session and we really are...because all of our goal is to have good enforcement of the TPR law. So, I would prefer Chair, if we could and we have an Executive Session posted, do we not?

Chair Furfaro: I agree with you. I probably, in my last comments to you, I got as close as I could to breach possibly things that should not have been touched on. I agree with...this posting in open session came from me. We have a posting in Executive Session. I want to say I concur with Councilmember Yukimura, you still have the floor. But let us make sure we understand we have an Executive Session posted.

Ms. Yukimura: Can we go in now?

Mr. Rapozo: No.

Ms. Yukimura: Then we would then have the session first and then have the open discussion, is my thought because we would then have a lot more understanding.

Chair Furfaro: If you would like to make a motion to go into Executive Session first, I will take that under consideration and call for a vote now.

Ms. Yukimura: I mean, I do not want to do it unilaterally. But it seems to me if we had the background discussion than we can more clearly ask the open questions in open session without jeopardizing our enforcement efforts. If everybody is alright? Well, I guess we can have a discussion based on the motion.

Ms. Yukimura moved to convene in Executive Session on ES-604 as recommended by the County Attorney, seconded by Ms. Nakamura.

Chair Furfaro: We have a motion to go into Executive Session as well as a posting and on that note, before I recognize anybody...I think we probably have to read what is stated...what is stated for Executive Session before we look at a vote. Is in Mr. Jung going to read that or are you going to read that Al?

ALFRED B. CASTILLO, JR., County Attorney: The matter for your consideration is ES-604.

ES-604 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on implementation of Bill No. 2439 relating to the Planning Department's civil fine authority and methods of investigations and related matters to address questions related to levying and collecting civil fines pursuant to Hawai'i Revised Statutes Section 46-1.5. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: That is what we had posted today. As a practice for myself since Chair, I will open for discussion. But I will do a roll call vote when it comes to the actual motion. Mr. Rapozo, you have the floor.

Mr. Rapozo: Thank you, Mr. Chair. I am not going to be supporting going into Executive Session. I do not see any...this is an update on the enforcement initiatives. The enforcement, like Mr. Hooser said, it is not a secret how we are going to enforce. The litigation strategy, I can understand that, yes of course we are not going expose our strategy if we should be contested. But the enforcement which is what is on the agenda, the fines are not on the agenda. You are asking now to go to another separate item that is on the agenda that is scheduled for later today. But the discussion today, for this item, is simply what is the strategy? What are we going to do? What are the initiatives as far as enforcement? Send the message out. I agree with Mr. Hooser. Let them know we are coming. I think Chair Furfaro made a joke of it here, "bam bam." I am here. I am "bam bam." I am from the Planning Department and I need to check your permit. What is so secret about that? Right now I can tell you what the perception of the public is after this little morning dialogue. There they go...there they go. The Planning Director cannot answer the questions. They are going to go into Executive Session, keep the public...why? Why are we doing that? I am not asking for litigation strategies. My question is why has the Planning Department not done what the Council and the Administration agreed to do as far as enforcement? I still have not gotten an answer. That is, I think, what the discussion that should be in open and not in private. Thank you.

Chair Furfaro: JoAnn.

Mr. Castillo: Council...

Ms. Yukimura: I agree...

Chair Furfaro:
something.

Excuse me, JoAnn. Did you want to say

Mr. Castillo: Yes. Excuse me, is Council Chair. May I say something please? Nothing that we are doing here today is being done in secrecy and have anything to hide. Everything that we are suggesting is due process. Due process that is required by our Constitution as Americans. I take issue because of the fact that the very questions that all of you are asking will easily be answered in Executive Session. We cannot air out all of these answers to the questions here in the open. I ask that we go into Executive Session because the answers are in there. We have nothing to hide.

Chair Furfaro: Okay and I just want to make sure that you understand, that is the reason I brought the Coco Palms example up. That is about due process. Although there might be different variances here, but I understand what you are saying. Thank you for that. I am going to recognize...you may want to stay there, Al, while members have questions because we are going to vote to go into Executive Session here. Councilmember Yukimura.

Ms. Yukimura: I am concerned that ES-604 does not describe fully enough the scope that we would need in order to discuss the enforcement of TVR. I do not agree with Councilmember Rapozo that enforcement is different from litigation strategy. I think litigation strategy involves all of it and so I do worry that we will jeopardize our litigation efforts in talking about certain things in the open. But I am worried that this posting is too narrow and that what we really require for a robust discussion about this problem that we really feel and are concerned about needs to be more broadly worded.

Mr. Jung:
Chair, if I could address that?
Chair Furfaro:

And just so the Council is aware, Council
Have you the floor.

Mr. Jung: I am the one (1) who drafted this based on a request from Council. The reference to Bill 2439 had just been passed at the last meeting so we did not have an Ordinance number assigned to it yet. Although it came in after the submitted of the request, the idea was to give you an idea of how the process in terms of how appeals of Chapter 9 work based on the collecting and levying fine as well as how actual cause proceedings work based on I few were going to go after a particular individual. So, it was broaden the context of not just TVRs, but everything that was raised in the last meeting to discuss any type of violation that might be of the CZO. So, it was a general discussion.

Ms. Yukimura: Which you feel would be broad enough to have a thorough discussion of TVR enforcement?

Mr. Jung: Just as any other violation of the CZO, a TVR is a violation of the CZO depending on the context of the operation exists. It is the same enforcement strategy and same enforcement mechanism.

Ms. Yukimura: Alright. Well, if that is your legal opinion then we should try it and go into Executive Session.

Mr. Kagawa: I kind of agree with Councilmember Rapozo in that I do not like the fact that sometimes we go into Executive Session when

questions are not Executive Session in nature and have I a couple that I do not think are Executive Session in nature. As long as we go in there and my questions are meant for the general public, you let me know that we can ask those in front of the general public because I do not like to live behind the wall. Thank you. I will be supporting the motion.

Chair Furfaro:

If not any more discussion? Mr. Hooser?

Mr. Hooser: Mr. Chair, I am not comfortable going into Executive Session. The County Attorney is here and as he has been doing interrupting if he believes that the conversation strays. I think it is a perfectly legitimate discussion to have in the public. What are you doing to ensure that the law is enforced and not about particular cases. I certainly do not believe anyone wants to violate anybody's due process. But to hear the Planning Department say that there is (x) number of TVRs and we believe (x) number are in violation, here are some of the reasons that they are violating, we are determined to go after them, we are sending out citations with plan on fining and taking them through the process, this is what we are doing and how we are doing that. I do not believe that needs to be done in Executive Session. So, I believe...I will not be supporting the motion.

Chair Furfaro:
roll call? Vice Chair?

Okay. Any more discussion before I call for

Ms. Nakamura: I will support the move to go into Executive Session and as I recall the last time this motion was made everyone agreed to do that. The frustrating part about that vote was when we went into Executive Session we did not have the resources there to answer the questions. So, that is why it is a little frustrating because now I believe we have that opportunity to have those discussions and to get a better understanding of the strategy. Thank you.

Chair Furfaro:

Mr. Rapozo?

Mr. Rapozo: Thank you, Mr. Chair. I think Mr. Jung stated it accurately was the last Executive Session was pertaining to the Bill of the fines, not TVRs. I agree that the language in that Bill...I mean in that Executive Session would encompass all investigations so you could...whatever Code violations you could discuss. But that was not the intent of that Executive Session. That Executive Session's intent, the reason I supported it, was because it was to talk about the Bill that was before us, about the fining authority and so forth. So, that is why I supported it. We went in. Obviously, the players were not here. So, we could not have a discussion because no one knew what was going on. So, we came out of Executive Session. This case is...I mean this posting today what we are in. I fully intend to go into Executive Session when that matter gets called for the reason it was placed on the agenda. The discussion at hand involving the TVRs and enforcement, I do not believe that warrants it and I will not be supporting it. But I definitely will if it is pertaining to the fining authority and when we come up to it then I will definitely support it. I agree with Mr. Hooser. The County...if we are straying, they can tell us to stop. We should know that. We should not be talking about pending cases and I will tell you that...and I guess it is extremely frustrating for me, Mr. Chair, because I have submitted and for the new Councilmembers you may not be aware. But over the last few years I have submitted specific complaints on violations, specific with investigations discussed and to no resolve. Now, those issues we can discuss at a later posting which I fully intend to do. I am going to

take those cases that we just read on the blog, Mr. Chair, I am going to be asking that we have an Executive Session pertaining to individual specific cases. That is where it belongs. But the discussion on TVR enforcement definitely should be put here. Thank you.

Chair Furfaro: I am going to get ready to call for the vote. But before I do, with one (1) absent member today, I want to make sure that you are all clear on the rules. We do not necessarily need five (5) votes. We need two-thirds, am I correct? So, to go into Executive Session, we need four (4) votes today. On that note and that understanding, I would like to call a roll call.

The motion to convene in Executive Session for ES-604 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Kagawa, Nakamura, Yukimura, Furfaro	TOTAL – 4,
AGAINST EXECUTIVE SESSION:	Hooser, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: We have a 4:2 vote. We have two-thirds of the of the Councilmembers in attendance. For those of you in the audience, in five (5) minutes we are going to be in Executive Session. You may have to vacate this room on that note.

Mr. Rapozo: Mr. Chair.

Chair Furfaro: Yes, Mr. Rapozo?

Mr. Rapozo: Is it possible to take public testimony before because this is probably going to take to lunch and I know we have a Resolution scheduled for after lunch. Unless they are willing to stay, that is fine. Are you guys going to stay?

Chair Furfaro: Are you going to stay awake? Is that what I heard. For the cameraman, do I have your attention? When we break, I want to take our ten (10) minute break. So, that gets behind us. We are going to go into Executive Session and you take a caption break at the same time.

Mr. Mickens: How long, Jay, for Executive Session?

Chair Furfaro: You just told me you could stay up all night.

Mr. Mickens: You are saying it is going to be 4:00 before you come back?

Chair Furfaro: No.

Mr. Rapozo: I said that.

Mr. Mickens: Oh, okay.

Chair Furfaro: You did not hear that from me.

Mr. Mickens: Any guesstimate how long?

Chair Furfaro: Wait a minute, let me see if I have any crystal ball. I do not know, Glenn. I am trying to be fair. Remember at 1:30, we have a Resolution scheduled. So, I do not know if it will take us all the way to lunch. But I suspect it will.

There being no objections, the Council recessed at 11:23 a.m.

There being no objections, the meeting was called back to order at 1:34 p.m., and proceeded as follows:

Chair Furfaro: Aloha, good afternoon everyone. I would like to take a moment to actually close out item C 2013-89. I am actually looking for a motion to receive.

Mr. Kagawa moved to receive C 2013-89 for the record, seconded by Ms. Nakamura.

Chair Furfaro: Thank you. This item, as you know will probably be coming up towards the end of March as we are going to reserve some of the people that wanted to testify until then. They have left for the day and knowing that it is going to come back on the agenda, they are going to wait until then. Any further discussion?

Mr. Rapozo: I have a question. Was it all members present? I just want to make sure because the people that left were under the impression they were going to be able to testify.

Chair Furfaro: I talked to two (2) of them who said they were not coming back.

Mr. Rapozo: Karen and...

Chair Furfaro: Barbara.

Mr. Rapozo: I know I saw Ken outside and you thought it coming back.

Chair Furfaro: Well, it is 1:30 there or about. If he thought it was supposed to be bid, he should be here.

Mr. Rapozo: No, we told him at 1:30 that we had the Resolution for the sanctuary.

Chair Furfaro: Let us make sure in the future we send these guys to see the Chairman. I want to finish this item. Is it your intent, Glenn, to give us testimony on the item that was just *pau*? I was told two (2) of you said no.

Mr. Mickens: Right.

Chair Furfaro: Is Ken entitled?

Mr. Mickens: No.

Chair Furfaro:
that can satisfy it for now.

No, okay. So, Barbara is not either. I hope

Mr. Rapozo:

Okay. That is fine.

Chair Furfaro:
March it will be remain reposted.

This will be coming back towards the end of

Mr. Mickens:

Thank you, Jay.

The motion to receive C 2013-89 was then put, and was carried by the 6:0:1 vote (*Mr. Bynum excused*).

Chair Furfaro: Thank you very much. Now I am going to ask for the Clerk, if you can take us to page 5, as I want to fulfill the requests made by Mr. Kagawa for 1:30. Mr. Kagawa, I am going to let you run this item. Resolution item 2013-38 to the Clerk. I would like if possible to read the Resolution. Is Scott prepared to do that? Yes? Okay, very good. Then I will turn it over to you, Mr. Kagawa. Clerk, you have the floor.

There being no objections, Resolution No. 2013-38 was taken out of order.

Resolution No. 2013-38 – RESOLUTION SUPPORTING KAUAI'S FISHERMEN, OCEAN GATHERERS, AND RECREATIONAL OCEAN USERS:

WHEREAS, the National Oceanic and Atmospheric Administration (NOAA) is a federal agency within the Department of Commerce with science, service, and stewardship missions; and

WHEREAS, the Office of National Marine Sanctuaries of NOAA within the National Ocean Service is tasked with management of all designated national marine sanctuaries within the United States and its Territories; and

WHEREAS, the Office of National Marine Sanctuaries of NOAA works with other NOAA programs and others to help manage marine life, habitats, and cultural artifacts within sanctuaries; and

WHEREAS, the Hawaiian Islands Humpback Whale National Marine Sanctuary ("Sanctuary") was created by Congress in 1992 for the following purposes: (1) protect humpback whales and their habitat; (2) educate and interpret for the public, the relationship of humpback whales to the Hawaiian Islands marine environment; (3) manage human uses of the Sanctuary consistent with the Act and the National Marine Sanctuaries Act; and (4) provide for identification of areas of national significance, as described in the National Marine Sanctuary Act for possible inclusion in the Sanctuary; and

WHEREAS, the Act of Congress that created the Sanctuary requires that the Sanctuary Management Plan shall: (1) facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the objective of protection of humpback whales and their habitat, (2) set for the allocation of Federal and State enforcement responsibilities, as jointly agreed by the Secretary of Commerce and the State, (3) identify research needs and establish a long-term ecological monitoring program with respect to humpback whales and

their habitat, (4) identify alternative sources of funding needed to fully implement the plan's provisions, (5) ensure coordination and cooperation between Sanctuary managers and other Federal, State, and local authorities jurisdiction within or adjacent to the Sanctuary, and (6) promote education among users of the Sanctuary and the general public about conservation of humpback whales and their habitat; and

WHEREAS, the Sanctuary is co-managed by the State of Hawai'i through the Department of Land and Natural Resources (DLNR) and NOAA of the U.S. Department of Commerce through a Compact Agreement signed in 1998; and

WHEREAS, the designated Sanctuary waters lie mostly within distinct areas of relatively shallow water (less than 600 feet) selected to protect the humpback whale in the Main Hawaiian Islands (MHI), and constitutes one part of the world's important humpback whale habitats; and

WHEREAS, the status of the humpback whale has recently changed from "endangered" to "least concern: species evaluated with a low risk of extinction" with populations increasing as documented by the International Union for Conservation of Nature (IUCN), the official international agency that tracks the status of endangered and threatened species worldwide; and

WHEREAS, the Hawaiian monk seal is not included as a species in the Hawaiian Islands Humpback Whale National Marine Sanctuary, but is protected separately under the Endangered Species Act, the Marine Mammal Protection Act, and the wildlife laws of the State of Hawai'i; and

WHEREAS, the main habitat for the Hawaiian monk seal lies within the Papahānaumokuākea (Northwest Hawaiian Islands) National Marine Monument area, and not the Main Hawaiian Islands; and

WHEREAS, in 1988, critical habitat for the Hawaiian Monk Seal was already designated on all beach areas and ocean waters to a depth of 120 feet around the Northwestern Hawaiian Islands, and does not include the Main Hawaiian Islands; and

WHEREAS, in its Draft Endangered Species Act ("ESA") Section 4(b)(2) Report dated September 2010, the National Marine Fisheries Service (NMFS) has recommended establishing a marine and terrestrial critical habitat for Monk Seals in the Main Hawaiian Islands (MHI) to include all beach areas up to 15 meters onshore, and offshore to the 500-meter water depth to include: sand spits and islets, beach vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters around the entire MHI including terrestrial and marine habitat of Kaula, Ni'ihau, Kaua'i, O'ahu, Maui Nui (including Maui, Moloka'i, Lāna'i, and Kaho'olawe), and Hawai'i; and

WHEREAS, the Hawaiian Islands Humpback Whale National Marine Sanctuary Management Plan, completed in 1997 and revised in 2002, is used to guide management actions of the Sanctuary; and

WHEREAS, the Hawaiian Islands Humpback Whale National Marine Sanctuary Management Plan, established in 1992 and currently in the review process begun in 2010, seeks to change the single species mission and mandate of the Sanctuary, including management, oversight, methodologies, regulations, and

priorities which could result in a completely new management plan for the Sanctuary, including proposed expansion of the sanctuary scope to include ecosystem management of resources located mainly within the jurisdiction of the State of Hawai'i; and

WHEREAS, the new management plan for the Sanctuary is being compiled to include an Environmental Impact Statement for changes to the Sanctuary's mission and management role without first having disclosed the purpose and nature of the changes being considered; and

WHEREAS, public meetings have been held by the Department of Land and Natural Resources (DLNR) to gather input from area fishermen and ocean gatherers and users to identify important areas and concerns, and assist DLNR and the Sanctuary co-managers in evaluating the potential impact of various measures being considered by the Hawaiian Islands Humpback Whale National Marine Sanctuary, including the inclusion of additional species; and

WHEREAS, the Hawaiian Islands Humpback Whale National Marine Sanctuary must develop this revised Management Plan according to national laws and regulations including economic and cultural assessments of impacts to the people living in or near the Sanctuary, as well as documenting the scientific basis for the Humpback Whale and its habitats considered under the Endangered Species Act; and

WHEREAS, Kaua'i's fishermen, ocean gatherers, and ocean recreational users have expressed concern that the new Sanctuary Management Plan will change the Sanctuary's role and responsibilities, and may include new or amended regulations used to manage human activities to protect sanctuary resources, which may, in turn, conflict with access to and use of ocean resources by restricting or prohibiting cultural, recreational, and economic activities; and

WHEREAS, the target for completion of a draft revised management plan is the latter half of 2013, and a final revised plan is targeted for completion in 2014; and

WHEREAS, Kaua'i's fishermen, ocean gatherers and traditional users, and ocean recreational activities have expressed concern about the consultation and decision-making process whereby new regulations are being added for fishing and gathering areas based on the addition of new species to the Sanctuary, such as the Hawaiian Monk Seal, several species of coral, and the False Killer Whale; and

WHEREAS, Kaua'i Ocean Users (an informal committee of concerned fishermen, ocean gatherers and traditional users, and recreational ocean users), have obtained the signatures of over 6,000 residents of Kaua'i opposing the expansion of the Sanctuary into new areas or new species; and

WHEREAS, Kaua'i Ocean Users has also expressed concern that any new regulations and agreements for the addition of species into the Sanctuary may have extensive consequences not adequately addressed in the management plan revision process, including:

- 1) prohibiting access to State waters around Ni'ihau for public use while ensuring private access;

- 2) undermining or prohibiting the ability to conduct traditional cultural practices and artisanal fishing and gathering within the Sanctuary;
- 3) hampering both commercial and small business fishing industries, which may need to anchor vessels;
- 4) placing the needs of new species in the Sanctuary (such as seals) over those of the people without adequate studies on the economic and cultural impacts of these species, especially for species such as the monk seal that compete with humans for seafood;
- 5) underplaying the threat of increased bacterial disease and parasites on Hawai'i fisheries, fish livestock, and humans due to an increased population of both Humpback Whales and Monk Seals; and
- 6) failing to conduct a comprehensive study of the cumulative impacts of adding species and habitats to the Sanctuary waters, including economic and cultural impacts; and

WHEREAS, the purpose of the Hawaiian Islands Humpback Whale National Marine Sanctuary has been achieved as evidenced by the successful recovery of humpback whales (being proposed for delisting as an endangered species), the recovery and proposed delisting of the Green Sea Turtle in Hawai'i (recovered without Sanctuary protection), and an increasing population of monk seals in the Main Hawaiian Islands (also without a need for Sanctuary protection); and

WHEREAS, Kaua'i Ocean Users, in seeking to provide an understanding of their fear of regulations promulgated solely on information supporting expansion of the Hawaiian Islands Humpback Whale National Marine Sanctuary Management Plan into a multi-species ecosystem management of fisheries within the jurisdiction of the State of Hawai'i, and any listed threatened and/or endangered marine species in Hawai'i, including their critical habitat areas, have focused their attention, among other things, on the following:

- 1) Any Management Plan or agreement that changes the responsibilities of the single-species Hawaiian Islands Humpback Whale National Marine Sanctuary must be considered as a new initiative, subject to Congressional approval, and not be considered an add-on or revision to any existing Federal and State agreements.
- 2) The Main Hawaiian Islands should be a separately designated management region, with its own laws and regulations, and not be incorporated into any agreements concerning the Northwestern Hawaiian Islands.
- 3) The State of Hawai'i must take the lead in managing its ocean waters and honor its responsibility to manage all State waters for the people of Hawaii nei, as spelled out in the Hawai'i State Constitution. This includes hiring a qualified fisheries expert who is skilled in strategic, financial, operational, and project oriented management to lead the Department of Land and Natural Resources (DLNR) Hawai'i Division of Aquatic Resources (DAR).
- 4) No new species shall be considered for inclusion in the Hawaiian Islands Humpback Whale National Marine Sanctuary without prior

documentation and determination of the potential effects on the ecosystem, economics, cultural uses, and traditions, and an evaluation of the effects on the public access to State beaches and waters for each additional species proposed for inclusion, and said document is fully disclosed and made publicly available at least 60 days in advance of any such consideration.

- 5) Hawai'i's economic, cultural, and subsistence wealth is based on its natural and cultural resources, which considers all natural and cultural traditions as resources to have value. In Hawai'i, the viability of these resources depends on the ocean and vice versa. Conservation and use of these resources and their regulation are the responsibility of the State of Hawai'i first, and not the Federal Government or environmental groups who use Federal regulations to undermine State authority.
- 6) The imposition of critical habitat mandates is a systematic approach to implementation of the Akaka Bill, which was modeled in many ways after the 1971 Alaska Native Claims Settlement Act whereby federal recognition of the Alaska Natives as indigenous tribes resulted in their giving up their rights and claims to traditional lands and hunting grounds, including forfeiting their gathering, hunting, and fishing rights; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that it supports the efforts of Kauai's ocean users (the local fishermen, ocean gatherers and traditional users, and other ocean users) to limit further regulations in Hawai'i's ocean waters through expansion of federal authority over Hawaiian waters.

BE IT FURTHER RESOLVED, that it requests the State of Hawai'i to take an active role in management of marine resources, as required in the State Constitution.

BE IT FURTHER RESOLVED, that it requests of both the Department of Land and Natural Resources (DLNR) and the National Oceanic and Atmospheric Administration (NOAA) that any documentation of existing conditions or development of new plans for the Sanctuary must include equally balanced studies that describe measures to ensure the economic and cultural survival of the people, including protecting subsistence fishing and Native Hawaiian cultural practices and gathering rights and preserving the āina, and recognize the needs of fishermen, traditional ocean users and ocean gatherers.

BE IT FURTHER RESOLVED, that it requests NOAA, through all its branches and divisions, to exclude the Main Hawaiian Islands in its recommendation to designate a critical habitat for the Hawaiian Monk Seal, and to refrain from including any other species into the Sanctuary until complete analyses and public disclosure take place and until all legislative requirements are met.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to William J. Aila, Jr., Chairperson, Department of Land and Natural Resources; Elia Y. K. Herman, State Co-Manager, Hawaiian Islands Humpback Whale National Marine Sanctuary, Department of Land and Natural Resources; Malia Chow, Sanctuary Superintendent, Hawaiian Islands Humpback Whale National Marine Sanctuary, National Oceanic & Atmospheric Administration; Michael

Tosatto, Pacific Islands Regional Administrator, National Marine Fisheries Service, National Oceanic & Atmospheric Administration; Governor Neil Abercrombie; State Senator Ronald Kouchi; State Representative Derek S.K. Kawakami; State Representative Dee Morikawa; State Representative James Kunane Tokioka; Mayor Bernard Carvalho Jr.; Jean Souza, Kaua'i Island Coordinator, Hawaiian Islands Humpback Whale National Marine Sanctuary; and Kaua'i Ocean Users (an informal committee of concerned fisherman, ocean gatherers and users, and recreational ocean users).

Chair Furfaro: Thank you very much. To the Clerk's Office I will go through a couple of housekeeping items here and then I will plan to turn over the microphone over to the introducer of Bill. Do you have written testimony and if so, how many copies?

SCOTT SATO, Council Services Review Officer: We have seventeen (17) pieces of written testimony.

Chair Furfaro: Thank you very much. Do we have existing sign up sheets?

Mr. Sato: We have four (4) registers speakers.

Chair Furfaro: We have four (4) registered speaker?

Mr. Sato: Correct.

Chair Furfaro: For anyone in the audience that wishes to speak we have a sign up sheet here on my left, your right. If you wish to give testimony on this. The rules will permit six (6) minutes of testimony at the discretion of the Chair. I am passing on that authority to the introducer of the Resolution and on that note, Mr. Kagawa, I will give you the floor.

Chair Furfaro, the presiding officer relinquished Chairmanship to Mr. Kagawa.

Mr. Kagawa: Thank you, Mr. Chair. First of all I want to thank you for allowing me to have this item at this specific time and it allowed for the nice crowd that we have in front of us. Had we just taken it up in a normal course of action I believe at least half of this crowd would not have been here. So, it is a nice crowd of speakers and listeners that we have here. We have people from both sides which is always nice to have when we are discussing such an important issue. My intention in introducing this Resolution was basically to protect our children and our future's children's right to swim at our beaches, to fish where we have been able to fish all of these years, and that is something that I value deeply and I think the people of Kaua'i value deeply, to use our oceans, our beaches, that is why we live here. We do not have pro sports here. We do not have UH Football to enjoy. We basically work hard and we enjoy the outdoors. We enjoy the beaches and enjoy going fishing and those kind of things are very important to us. So, that is why I have put this Resolution. I think it is important for the Council to hear this big issue that has been before us. There have been a lot of hearings, public hearing. A lot of people in the public have not heard testimony on both sides for and against. Here at the Council we have Ho'ike and thanks to them a lot of the people will be heard. That is an important part of making a decision, is getting to hear what both sides have to say. With that, we will go to the speakers. Again, like

the Chair said, I will keep the same rules. You have three (3) minutes, you have a warning bell, and then you will be given an additional three (3) minutes. So, six (6) minutes total and you will be asked to summarize at that point. With that Clerk, could we have the first registered speaker, please.

There being no objections, the rules were suspended to take public testimony.

MEL WELLS III: Hello and as a *haole*, let me say *aloha* and thank you for letting me speak to you today. I am member of the Kaua'i community who had a chance to listen...

Mr. Rapozo: Excuse me, if you could just state your name for the Captioner.

Mr. Wells: Mel Wells III.

Mr. Rapozo: Thank you.

Chair Furfaro: Excuse me, are we okay over there? Okay. Thank you, Mel.

Mr. Wells: As a member of the Kaua'i community who has had a chance to listen to community over two (2) years in regards to the Humpback Whale Marine Sanctuary current Management Plan review, they are in their fourth stage of their Management Plan review yet they continue to not to listen to the wishes of the people of Kaua'i. Specifically, I have been to every Sanctuary Council meeting on O'ahu and Maui over the past three (3) years. I can answer some questions that you may have as I also have all of the documents from those meetings and have actually read them. Some keynotes for to you to consider in the Resolutions in front of you. A reference of over six thousand (6,000) signatures Kaua'i in clear objection to expansion adding any additional species. At the time public comment closed, we submitted on October 14, 2010 fifty-two (52) ballots, five thousand five hundred thirty-four (5,534) signed petitioners and six (6) comments opposing expansion and opposing adding additional species. At that point the Sanctuary Council said it was too early for them to say what they were intending to do. They were just starting the Management Plan process. So, no need for us to get alarmed. As we were just asking the public what they think the Council should do. Well, years later and here we are with proposed/talked about closures areas around Ni'ihau, adding all species including corals, now targeting monk seals with a need to transrelocate to inhabited islands. Since the ban on fishing in the Northwestern Hawaiian islands changed the feeding habits of shark and other predators to focus on seal pups. So, NOAA is considering transrelocation. All are bad ideas for fishermen. Families on Kaua'i who count on locally caught fish, fish caught by friends and given to them to feed their families. That is what is important to the people of Kaua'i. It is not important to the management of the sanctuary. You know how many families are struggling these days? I heard about that a lot earlier today. With the Food Bank's testimony and all of your concerns. So, why does the Sanctuary not listen to the people? I am going to document some statements.

Mr. Kagawa: That is your first three (3) minutes. You have three (3) additional minutes

Mr. Wells: Dated 10/29/10, Duke Aiona stated, "Neither the Governor nor the Department of Land and Natural Resources has requested NOAA to add new species to the Sanctuary or expand it." That was written by Travis Taylor. A document from Governor Neil Abercrombie regarding fisheries and fishing, he stated: one (1), he wanted science based presentation and management of our aquatic resources to ensure that the people of Hawai'i can fish for generations to come, two (2), he wanted to preserve and promote local recreational and subsistence fishing, three (3) he wanted to preserve and protection had Native Hawaiian fishing access and practices, four (4) he wanted community indulgence in that management of aquatic sources, five (5) he wanted support for fishing as an economic activity. So, with that I now tell you that this is an E-mail...I have an E-mail from February 22. Malia does not know that I have, from Dan (inaudible) and her, the Head of the Sanctuary. They were asked about the issue of having two (2) categories of fishing listed in the Sanctuary. One (1) being recreational and two (2) being commercial. The question was asked what about subsistence fishing or customary exchange fishing for the people Hawai'i, for the families on Kaua'i who count on locally caught fish, fish caught by friends and given to them feed their families? You know how many families are struggling these days? So, because the National Marine Fisheries service is considering adding this for Hawai'i their response was, "Whatever Fisheries does or not relevant to the interpretation of the Hawaiian Island Whale National Marine Sanctuary's Act." They are leaning towards the sanctuary management...they are learning towards catch and release practices in Hawai'i. So, after the meeting, Malia states that the Hawaiian people need to be taught catch and release. So, the Department of the Navy's letter I have. They say they do not believe that the Sanctuary is proceeding in concert with the law and characterizing the significant modification as management plan update. They go on to state any change would require additional legislation. So, last week at a meeting I was attending with Senator Ron Kouchi, Representative Jimmy Tokioka, Dr. Carl Berg from KCC on Kaua'i and representing Surf Riders, and there is a representative of Surf Rider here, and his representation is different. Carl Berg said the Sanctuary should be abolished. The whales have recovered. Current status under NOAA Humpback Whales and the Green Sea Turtles are being considered for the listing. That was in the Resolution. So, thank you for your time. Please pass the Resolution in front of you.

Mr. Kagawa:

Thank you, Mel. Any questions for Mel?

Ms. Yukimura: Thank you so much, Mr. Wells. You sat here from the beginning in the morning until now and also your diligence in going to every meeting and reading every document is impressive. One (1) of the main concerns of those opposed to, I guess, expansion and adding other species is the lack or the concern about availability of fish, is that correct for fishing?

Mr. Wells: I am not truly a fisherman. I am part of a group of fishermen. It is a huge concern of theirs. So, that question would be better asked to Dennis Taguchi or Greg Holzman, But fishing and the ability to fish is a huge concern that I hear day in and day out and it is...if you look at their Act and under their guidelines, they are not to supposed to make any rules or regulations that affect fishing. Yet, I really feel strongly that they are headed that direction. So, my concerns sometimes are not with what their personal agendas are today, but after these laws are passed and the people that come into Office after them and their agenda, what will that bring to us? That is what I do not trust.

Ms. Yukimura:

Thank you very much.

Mr. Hooser: Actually, I thought you were a fisherman, so I was going to ask you fisherman questions. Do you work with the oceans? What is your affinity with the subject matter?

Mr. Wells: I am a professional ocean user. I have sailed Hawai'i from the mainland six (6) times and in the Trans-Pacific yacht race, Operations Manager of Holo Charter, surf, paddle, I do fish, swim, beach-goer, ocean user.

Mr. Hooser: So, in terms of how something would affect you personally or professionally, how do you envision that? What is your concern?

Mr. Wells: My concern is for the people of Hawai'i to not have the ability through the State of Hawai'i to manage their resources and we have Federal Agencies managing our resources that do not live here, that do not fish here, that do not go to the beach here, that do not work here. I work on the ocean. I love the whales. My business, we see whales day in and day out. We go to Ni'ihau and we swim with monk seals. I see turtles. I am surrounded by our natural resources. We do not need the Federal Government to telling us how to manage them.

Mr. Hooser: Do you believe the State is managing the resources adequately now?

Mr. Wells: No. You ask Don Hicock, our Natural Biologist, here on Kaua'i about the management of the Green Sea turtle the last thirty (30) years and he can write a book on the disasters of that management. So, not everybody does a good job. But it is...these resources have been with us for a hundred thousand years, a million years, they are doing just fine. The whale population has increased dramatically. We will be walking on them to Ni'ihau, in five (5) years. There will be so many whales.

Mr. Hooser: Thank you, thank you very much.

Mr. Kagawa: Just to clarify, the subsistence fishermen that is the fishermen that basically catches or can you explain that in detail? What is your definition of "subsistence fishing?"

Mr. Wells: Subsistence fishing for the people of Kaua'i, the local families. They go out, they fish, they take home what they can eat, they give away to their neighbors what they have extra, if any, and they protect and cherish our resources. NOAA has no definition of "subsistence fishing." It is not going to be included in their Management Plan. So, there will be no provision for local people if and when they change the rules, the laws, to allow the local people to fish and feed themselves.

Mr. Kagawa: Well, because if I take your definition, that is what most of the fishermen, I know, are in that category. So, I mean, I know you have been kind of organizing with a lot of fishermen in attending a lot of these meetings. You have practical have been to all of them. What is the percentage, do you think, of boats or fishermen that are subsistence fishermen?

Mr. Wells: Subsistence fishermen on Kaua'i?

Mr. Kagawa: Yes.

Mr. Wells: I would say ninety-five percent (95%). I saw Libra pulling in and out of port years and year ago and they were catching akule, selling them on O'ahu. I do not see anybody going to O'ahu. All the fish are caught here and hopefully they stay here.

Mr. Hooser: Frankly, I am not as familiar as you are, I am sure, and many people in the audience, how the sanctuaries work and what their proposals are. I have been trying to come up to speed. But has the current Humpback Whale Marine Sanctuary prohibited subsistence fishing?

Mr. Wells: No, they have not.

Mr. Hooser: You mentioned it is not going to be in the draft plan, but I thought the draft plan would not be out for another year or so?

Mr. Wells: Correct. They are in stage four (4) of a five (5) year plan and they can correct me if I misspeak. What we keep hearing is vagueness from them. So, they cannot and they have not from the beginning told us exactly what they are planning to do. So, the local people and they cannot stay in tune with this and in touch with it. I go to three (3) or four (4) either meetings or E-mail webinars for a week and it is been ongoing for three (3) or four (4) years and we keep being bombarded, you know? Now it is the monk seals and now it is the coral species. NOAA just keeps attacking the State of Hawai'i.

Mr. Hooser: Believe me, I understand there are a lot of people in the ocean community that are very concerned and I understand that. The plan is not out yet, so it is difficult to say what is going to be the plan and what is not going to be the plan definitively.

Mr. Wells: Correct.

Mr. Hooser: I know you have your opinions and clearly very strong and have been involved in the issue for a long time. But the plan is not out yet.

Mr. Wells: Right. I would just like the NOAA Officials to know that we oppose expansion and we oppose additional species. Take us into consideration, please and people of Kaua'i.

Mr. Hooser: Thank you.

Ms. Yukimura: You oppose expansion because you believe that will adversely affect local fishing in the area? Is that basically the concern?

Mr. Wells: Local fishing...I mean now the coral species are on the agenda. If they deem a species of coral that is endangered, you walk on the reef, now you are subject to a federal fine.

Ms. Yukimura: So you are talking about reef walking in relationship to fishing?

Mr. Wells: It has everything to do at every beach on Kaua'i. I feel that with local government, local management, State of Hawai'i management we would be better off than having Federal legislation guiding us from Washington, D.C...

Ms. Yukimura: You know, I understand your concerns about Federal management of resources because I personally have been involved or at least aware of fish and wildlife's work, if you will, protecting endangered species as it affects taro farmers. I am really concerned with that, too. But I just want to make sure that we are not just making assumptions which may not be true because I do not think, for example, swimming at beaches will be affected. Will it?

Mr. Wells: I would certainly hope not. But their vagueness...

Ms. Yukimura: Yes. So I think that is kind of a bogeyman. So, let us get concrete because there are some genuine concerns, I think. I think we want to understand what those are.

Mr. Wells: Alright. So, I would state that the Whale Sanctuary by name would be to protect Humpback Whales. Humpback Whales have recovered. If they need to be called a different Agency or be combined with different agencies and if NOAA needs to re-look at their laws and agency classification and give them the credentials to govern in the correct areas, I whole heartedly agree. But NOAA Offices are huge and they have Divisions in separated buildings that are trying to do the same things. It would be great if NOAA's Fisheries would take over protecting everything under the Endangered Species Act.

Chair Furfaro: On that note. I have to interrupt. You are given six (6) minutes to testify. Members, you can ask for questions. But the response is only to your question and not additional time is given. Those are our rules. So, I just wanted to make sure we are square.

Mr. Wells: I appreciate you letting me speak for my six (6) minutes.

Chair Furfaro: Mr. Kagawa, you have the floor.

Mr. Kagawa: Any more questions. If not, next registers speaker.

Mr. Wells: Thank you very much.

Mr. Sato: The next registered speaker is Charles Perriera, followed by Dennis Eguichi.

Mr. Kagawa: Good to see you Mr. Charles. How are you? Please state your name and you may begin.

CHARLES PEREIRA: For the record I am Charles Blake Pereira. That seal they have been talking about for years, I had a brother-in-law who could tell you stories until 1977 or '73. I think it was the first time I saw that seal down in Anahola. So, I said well this is a true thing and I have been fishing from when I was a young boy, seven (7) years old and I am eighty-three (83). Before that time I

did not see seals around and my dad did a lot of fishing too but he did not come home and said that he had seen a seal. But that seal is a pest because I am a throw net man. I mess around with the gill-net. But my friends said that the net and the seal have been there to take that fish off that net and you would be surprised even in lobster season, boy he ate that thing like he eating cracked seed, you know? He just chewed that lobster up. It was unbelievable, you know? I heard about this fishing. Well, you know, I know some families, fifteen (15) in a family and that is their thing to bring home fish for the family to support the families, fifteen (15) of the. But I remember I worked at Coco Palms and anything that they brought to Hawai'i, they brought the tilapia. Do you see any water lilies in Coco Palms? They ate them up. But I do not know if they have a study before they brought them here. But things like that are happening. As far as the whale, I remember way back in World War II, back in the '40s, there was a ship that came to Kaua'i, Nāwiliwili and they were slaughtering the whales. I even had a tooth from one (1) of the whales and I do not know what happened to it after all of those years. But anyway I just wanted to...when it said something about fishing, that is why I am here. I want to hear what is going on. But we have been talking about the same thing over and over. Some of the fishing meetings some of the people that want to come to it because nothing has come out of it. *Aloha.*

Mr. Kagawa: Any questions for Mr. Pereira?

Chair Furfaro: Good to see you Uncle Charlie.

Mr. Pereira: Thank you.

Mr. Kagawa: Next speaker, please.

Mr. Sato: Next speaker is Dennis Eguichi followed by
Jean Huggins.

Mr. Kagawa: Aloha, Dennis, you win the award for coming
the farthest today, all the way from Kekaha.

DENNIS EGUICHI: *Mahalo.* Thank you. My name
Dennis, last name is Eguichi. I live on the West Side where practicing of getting
resources and sharing with our neighborhood is prevalent than, I guess the East
Side, except for maybe the North Shore. My primary concern is because I do not
want to see a duplication of what we already have with the State and then Federal
Government trying to duplicate what the State is already there for. I would like to
see maybe that the FEDs help support them with funding instead. I would like to
be able to pass on to my kids, which are already done, but my grandkids even, the
practice of being able to be self-sufficient and that is partly by going to the ocean
and get something of the resources. I would like to see this continue only because,
like I said, it is part of our lifestyle here and I am is not sure if NOAA understands
that it is. I would like also to see maybe NOAA concentrate more on helping the
State with propagation or propagating species rather than trying to conserve
everything which eventually means that we get restricted from. Thank you.

Mr. Kagawa: Thank you, Dennis. Any questions?
Councilmember Yukimura.

Ms. Yukimura: Hi, Dennis, thank you for being here. I think
we all share with you the idea of wanting to pass on to our kids what gives us joy,

doing things on the island. I just wanted to be clear how you think this Sanctuary would interfere with that, interfere with your passing on to your kids the ability to be self-sufficient?

Mr. Eguichi: Well, the fact that the Sanctuary exists now in a certain area does not hamper our getting to the resources right now. So, if that is the case and the Sanctuary's main purpose was the whales and now of course they are trying to include the other species, but if that was the case, then why do we need to expand the Sanctuary if the Sanctuary has actually been there? Nobody kills whales in Hawai'i. Maybe they should put a Sanctuary someplace else they do get killed. I do not know. First of all, I do not know why they have a sanctuary here because nobody kills whales. As far as maybe later on, like I think Mel mentioned that the Administration here now, if they open the doors, we do not know what will come next through the door. I think that is what our greatest fear is.

Ms. Yukimura: Two (2) out of three (3) speakers so far have said that you want the management to be in the State hands. But we have a letter from William Aila of DLNR saying it is in the State's hand because it is jointly done by the State and NOAA. Mr. Aila's letter states that no management actions can occur in State waters without the approval of the Governor and no fishing regulations shall take effect in State waters unless established by our Board of Land and Natural Resources. So, it seems like there is a safeguard already and actually I was glad to hear that because in some other cases with some other endangered species, you do not have that kind of State participation and power, you know? Like with the Shearwaters, it is just an issue between us and the Federal Government. But in this case, looks like there is actually a check, if you will, through the State.

Mr. Eguichi: Well,, we have had meetings with Mr. Aila, and also with Governor Abercrombie and basically what I think they are looking at is trying to figure out what...well, I am not sure if NOAA has actually told the Governor exactly what the entire plan is.

Ms. Yukimura: I do not think nobody yet has the draft plan.

Mr. Eguichi: So, until we actually get to that stage, we cannot say anything about what the State's role is. At this point, I honestly think, because I do not see any State Representatives here. Just NOAA and the general public again. The State is not here to reassure us that these things will be carried out through, that our resources we will be able to get access to the resources. This has been kind of true in most of the meetings that we go to. If we go to some meetings we only have the State, but it would be nice to be collectively there and reassure everybody this is how it is going to be.

Ms. Yukimura: Perhaps we as a Council body can request that the State come and be in conversation with us. Maybe that would be helpful. Oh, there is somebody from the State too. Finally, I think everybody actually shares the goal that we increase our fisheries or we increase the amount of fish in the ocean. I just saw a videotape last night that said ninety percent (90%) of the large fish are gone worldwide which is really big statistic, kind of a scary one. If we go back to the old ancient Hawaiian system of ensuring there was fish and in those times they could not go to a refrigerator and they did not get anything from off-island. You either have to survive self-sufficiently on the island or you died.

You perished. They had that *konohiki* or *kapu* system where certain plays were out-of-bounds, so that the *keiki* fish could thrive until they procreate to create more fish. Is that something that the fishermen would support to support the fisheries?

Mr. Eguichi: There are programs right now under West Pack. I think they have a pilot program down in Hanalei right now.

Ms. Yukimura: I do not know if it is under West Pack, but there is some talk and maybe people can come educate us who are still in the...

Mr. Eguichi: Rhoda Libre on the West side has been trying to see if she could get the Watershed Council going. That would take care of the mountain to the ocean. But there are so many different program going on, not collectively bringing it together and that seems to be the problem right now.

Ms. Yukimura: That is true. It is sort of overwhelming to the average citizen.

Mr. Eguichi: I would like honestly, to see more money spent on propagation rather than conservation.

Ms. Yukimura: Well, sometimes they are related. But I see your point that it needs to be really focused on more fish basically, producing more fish. Thank you very much.

Mr. Hooser: So, you have been fishing your whole life, I assume.

Mr. Eguichi: Pretty much.

Mr. Hooser: I think all of us are concerned about preserving and perpetuating more ocean resources. How would you say the amount of fish in the ocean today that you fish for, how does it relate to say twenty (20) years ago?

Mr. Eguichi: I am fortunately dabbled in a lot of different fisheries from pelagic, tunas, to deep sea fish and now to shallow water fish. The pelagic stuff definitely the size have been going down and I think that is because some of the fish is being elsewhere, the bulk of them because of persainers and things like that. But the normal reef fish the kind of things that I do in the shallow waters, if it was not for the *ta'ape* that was brought in that turned out to be an invasive species, I think we would honestly have a whole lot more fish because I used to do a lot of diving and I started in the deep and to the shallow and you could see the progression. Places where, example menpachi used to flourish. Eventually just more and more *ta'ape* and then now no menpachi. So, there is a lot of fish out there. It is just that the species that are out there are not the choice that people want to eat, that seem to be the number one (1) problem. Also fishing has a cycle and it is like a five (5) to seven (7) year cycle when there is abundance of certain species and because I guess for the propagation of that particular species everything seems to fall in place. So, you just have a whole lot more. An example akule some years back, maybe four (4) years back, people were saying we really have to look the akule fishery because we do not have too much akule. Well then that phase past and now we just have a whole bunch of akule again. So, it kind of goes through a cycle and it is hard to say at the particular time what the fishery really look like

other than there is tons of *ta'ape* out there, I mean tons of them. It is just that nobody wants *ta'ape*.

Mr. Hooser: Also you concerned about the State not being as involved. If the State...if we were assured or you were assured that this Management Plan would not...nothing in this plan would not happen without State's support, would that make you feel more comfortable about it?

Mr. Eguichi: It would definitely help. But unfortunately you all know and I know that it all depends on how much money comes along with the program for the State.

Mr. Hooser: Right. Thank you.

Mr. Eguichi: Just to be honest.

Ms. Nakamura: Thank you, Dennis, for coming all of this way and testifying. Because fishing is part of your lifestyle, you grew up fishing and you are teaching the next generation. How have monk seals impacted your fishing?

Mr. Eguichi: There seem to be a couple of monk seals in the area that I fish. I have heard complaints of fishermen actually going there and it happened to me also about two (2) week ago. I am out fishing and I drop my line down and I hook some fish, as I bring it up here comes the monk seal stealing all my fish. Since the monk seal is there all I end up doing is moving to somewhere else and trying to fish. Basically, what it does is just kills a little bit more time for me. Unfortunately, fishing is everything about time. When the fish is biting, there is only a short period of time when it bites and if you lose that, then you do not catch too much fish. So, unfortunately that particular day I did not catch as much. I co-exist with the seal with no problems. I just learned to move away from them. Unfortunately, the monk seal learned that there is free food around when there is a fishing vessel there and they can steal their fish. So, they are getting educated. There is a program that I know about that we can call in and tell them hey, we are having trouble with a monk seal here. I am not sure at this time if there is enough staff where they can send someone out to relocate the seal. So, most of us have been just moving instead and just telling each other, hey, be careful because there is a seal in the area?

Ms. Nakamura: Has it always been a problem when you were growing up and fishing with your father or grandfather?

Mr. Eguichi: No. When I actually started as a youngster fishing I used to follow guys that used to through nets instead. Basically we would go to the Na Pali coast and I remember seeing a seal there once or twice when I was really young. I would see some of them off of Ni'ihau. It is just that I see more seals now. I think we can co-exist with the seals. It is just that up to what point when we have too many seals?

Ms. Nakamura: Are you saying that sort of the current level of seal presence and activity works okay with people who are doing subsistence fishing?

Mr. Eguichi: Well, unfortunately, the seals do not just stay at one particular place. They move, you know? So, maybe we might have more

seals next year than we had this year or maybe we might be lucky and have less and they all go to the Big Island instead of O'ahu.

Ms. Nakamura: Thank you very much.

Mr. Rapozo: Councilmember Rapozo

Mr. Kagawa: I apologize I had to step out, but if you covered this than I apologize. What is the typical drill as a fishermen or beach user when a seal shows up on the beach, typically what happens?

Mr. Eguichi: To be honest with you on the beach I am not sure. I guess the people from NOAA can tell you that because I spend most of my time on the ocean instead, on the water. So, on the beach I am not sure. But I have seen where seals come up and they go and tape off the area which I like to see because it keeps people away. But then in a sense it kind of trains the seal to let them know they pull up here and it is their beach now. Sometimes I kind of wonder maybe if they were deterred, like example, maybe if they started to pull up at Po'ipū maybe not just one (1) or two (2) but ten (10) pull up. That means basically you will not have the tourist industry there using the beach. So, sometimes I wonder by just, like I said, taping off the area is a wise decision because it kind of trains the seal to let them know, every place I pull up, I own this place.

Mr. Rapozo: Well, I have received complaints and I agree that obviously wherever that seal goes we need to protect the area. But I have heard complaints that area is growing. That they roped off area can extend for the whole length of the beach and that, I think, is a concern of many beach-goers. Not so much fisherman but beaches like Baby Beach in Kapa'a where they call it Baby Beach because parents can bring the little ones because it is shallow, it is protected, and it is safe. But when a seal comes up they are basically kicked off the beach. That is a concern to me. That is the question really is what is the acceptable protection zone of the seal and I do not want to see it get any bigger.

Mr. Eguichi: Like I said, I honestly do not know and it really does not really affect me that much because I spend more time on the ocean than on the shore.

Mr. Rapozo: Thank you.

Mr. Kagawa: Just one (1) final question. Now I know that when I brought up the Resolution I got a lot of E-mails coming and telling me the same thing as I am hearing here from the State Agencies as far as oh, we have nothing proposed for another year or something, we are not doing anything. But in fact I have heard that there they are actually negotiating with the Robinsons about possibly doing a Sanctuary. Is that the same kind of stuff that you have been hearing? That they have these talks? So, there are plan for them to expand the Sanctuary?

Mr. Eguichi: Well, I honestly cannot say, because the meetings that we have gone to we meet with NOAA fisheries, NOAA. The Robinsons, I guess, have their own meeting later. So, I do not know what transpires.

Mr. Kagawa: Does it make sense that the whale population has gone up doing very well? I used to fish before too, a lot and I remember hardly seeing whales. Now when you go out there, there is nothing but whales out there, Humpback Whales. So, my question to you, does it make sense to create a Sanctuary when they are doing well populations wise?

Mr. Eguichi: We already have a Sanctuary. I cannot see an expansion to the Sanctuary if the population has increased that much.

Mr. Kagawa: Thank you.

Chair Furfaro: just wanted to get us all clear on the Resolution and we do have testimony from Mr. Aila here. At this point, I want to make clear that the Resolution introduced by Councilmember Kagawa, in all fairness is the Council taking a policy statement. Now the policy statement is one (1) where the vehicle is provided for us to give testimony to the FEDs and the State between the two (2) of them, they have a compact agreement on management and it looks like it is going to go on until spring of next year. So, this is a vehicle for us to give some testimony and I really appreciate what I am hearing from you because I, too, come from a fishing family. You know, it is all family and I remember being out on the ocean all night with grandpa and the fact of the matter we rarely saw seals then. We rarely see seals and of course, o'io fishing we are dropping *hauna* down there so that we can cultivate our place. We all know those terms. But the fact of the matter is that I want to make sure that we are really clear. This does not pass a law or an Ordinance. This just says our position is a policy statement that we feel it is worth working on and the kind of comments that you have shared with us is excellent feedback that we can send in with the Resolution regardless of where it goes. But I wanted to make sure that the audience understands that. Thank you for the time, Mr. Kagawa.

Mr. Kagawa: Thank you, Dennis.

Mr. Eguichi: Can I make one (1) more statement?

Mr. Kagawa: Go ahead.

Mr. Eguichi: I would like to thank you all and you have to remember that you guys represent Kaua'i basically. So, by just doing this I am quite sure that residents of Kaua'i will appreciate this. Thank you.

Mr. Kagawa: Thank you, Dennis. That is exactly why I put it on the agenda, to hear the tough decisions out there that we have. Next registered speaker.

Mr. Sato: We have Jean Higgins representing NOAA, National Marines Fishery Service Protected Resources Division, followed by Greg Holzman.

JEAN HIGGINS: My name is Jean Higgins and work with the National Marine Fisheries Service Protected Resources Division at the Pacific Islands Regional Office. I work with Kaua'i's communities to answer questions about the Endangered Species Act and Marine Mammal Protection Act. I am actually not here to provide testimony today. I actually just wanted to come today to provide responses to questions that you might have.

Mr. Kagawa: Thank you with that. Chair Furfaro, go ahead.

Chair Furfaro: I just want to take advantage of you being here to share with you this discussion which is extremely important for us to have a foundation and an understanding so it turns into a win-win situation. It is really important for me, that it turns into a win-win. For example, I know through my membership in the hotel association the boundaries for monk seals are actually shrinking in the direction. They are not expanding. They are shrinking on what they can call on for their reservation or their preferred space. They get a smaller room.

Ms. Higgins: That is correct.

Chair Furfaro: The other part and this is a dilemma for me in particular and as you know now, I told you that I come from a fishing family as well. You know we are going through the endangered species, dealing with the Newell Shearwater. We have been working on it for six (6) years here. The State and the Federal people in my opinion, they are not clear what the rules are. So, we have a tougher way to comply because the rules are constantly in motion and the message I want to ask you to take back is the fact that this is what I think I am hearing from Kaua'i people right now. This expansion, they are not sure of what the final rules will be. How do they comply with their concerns and are you folks on target to come up with your recommendations by spring of next year? Is it real? Is that a real date to grasp?

Ms. Higgins: I do want to clarify something. I actually do not work with the Sanctuary's program. I work with the Protected Resources Division of National Marine Fisheries Service.

Chair Furfaro: But you are connected in this discussion, are you not?

Ms. Higgins: We actually are not working on those regulations now.

Chair Furfaro: Oh, how interesting.

Ms. Higgins: There are separate branches of NOAA and we actually do have people here in the rooms to answer those types of questions. So, I will let them answer those questions.

Chair Furfaro: Well, so that I know who they are could, they raise their hand. There is a troop of them. Very good.

Ms. Higgins: Yes, Malia Chow will actually be testifying later and so will Jean Souza.

Chair Furfaro: So, at this pointed Mr. Kagawa, I will give you back to you and people are now hearing that I want to come out with a win-win situation.

Mr. Kagawa: Any more questions for Jean?
Councilmember Yukimura.

- Ms. Yukimura: What is your last name, I am sorry?
- Ms. Higgins: Higgins.
- Ms. Yukimura: Higgins?
- Ms. Higgins: Yes. I will provide business cards to the Clerk.
- Ms. Yukimura: Thank you very much for being here.
- Ms. Higgins: Sure.
- Ms. Yukimura: So, you are with the National Marine Fisheries Protective Species Division?
- Ms. Higgins: That is correct.
- Ms Yukimura: And so you deal with endangered species that are marine species?
- Ms. Higgins: That is correct.
- Ms. Yukimura: So, not Shearwater?
- Ms. Higgins: No, not Shearwaters, no. That is under Fish and Wildlife Services jurisdiction.
- Ms. Yukimura: It is true like Mr. Eguichi said, sometimes there are so many agencies and individuals that it is hard for members of the public to understand who is who.
- Ms. Higgins: Absolutely. There are a lot of different branches to look at and really understand how the Divisions work and where the authority lies.
- Ms. Yukimura: What is the main habitat for the Hawaiian monk seal?
- Ms. Higgins: The range of the Hawaiian monk seal is the entire Hawaiian archipelago and Johnston Atoll.
- Chair Furfaro: Could you yield the floor to me for a housekeeping item real quick?
- Ms. Yukimura: Sure.
- Chair Furfaro: Mr. Kagawa, we have students coming from Waimea High School to participate in this hearing. I think there is maybe twenty (20) of them. So, when they do come in can we in fact, maybe hold the questions while they get settled in the room? Thank you very much.
- Ms. Yukimura: Yes, that makes sense. But we will continue until they come in.

Chair Furfaro: Of course.

Ms. Yukimura: Thank you.

Mr. Kagawa: Proceed.

Ms. Yukimura: So, you were saying that it is the entire Hawaiian archipelago.

Ms. Higgins: And Johnston Atoll is included in the range or the Hawaiian Monk Seal.

Ms. Yukimura: And the Johnston Atoll. And you have determined that based on their range of travel and feeding and so forth?

Ms. Higgins: That is correct. Yes, it is based on our citing data, our historic data from Hawaiian Monk Seal citing. So, the range is considered that.

Ms. Yukimura: Your historic data shows that the monk seal existed in ancient times or is that relatively new?

Ms. Higgins: We do have sightings in the main Hawaiian Islands actually going back to...in the written record, occasionally in the main Hawaiian Islands. There is some fossil evidence of bone being found on the islands of Hawai'i as well for monk seals. But they are rare in the mainland Hawaiian Islands.

Ms. Yukimura: So, they were probably further north? Is that what...

Ms. Higgins: It is considered that the majority of the population was probably in the Northwestern Hawaiian Islands during early settlement periods of times?

Mr. Kagawa: We will take a short break. I want to welcome the Waimea High School students. We are taking a short break while you get in. I just want to tell you that I am a proud Waimea graduate. If you cut my skin, I will bleed blue.

Ms. Yukimura: So, is there a draft Endangered Species Act?

Ms. Higgins: The Endangered Species Act, no. There is not a draft out right now. It is actually one (1) of our laws under the Federal Government. Are you referring to a different document perhaps?

Ms. Yukimura: I think...maybe the Resolution refers to it. Oh, yes, on page 2 of the Resolution it talks about a draft...it is a draft Endangered Species Act report dated September 2010.

Ms. Higgins: That is the 4(b) 2report that you are referring to that is in Resolution?

Ms. Yukimura: Yes, Section 4(b)2.

Ms. Higgins: That is correct. That is part of our...one (1) of the supplemental document for our proposed rule for critical habitat for Hawaiian Monk Seals.

Ms. Yukimura: So, that report recommends establishing a marine and terrestrial critical habitat for monk seals in the main Hawaiian islands.

Ms. Higgins: That report does. The boundaries that are actually reported in the Resolution are incorrect?

Ms. Yukimura: They are not correct?

Ms. Higgins: No, they are not correct.

Ms. Yukimura: What are the correct boundaries per the report, I guess? It is in the report?

Ms. Higgins: Yes, they are actually in the report. The correct boundaries are actually five (5) meters inland from the shoreline in the main Hawaiian islands out to a depth of five hundred (500) meters.

Ms. Yukimura: So, to include all beach areas up to five (5) meters onshore?

Ms. Higgins: Yes.

Ms. Yukimura: And offshore, to five hundred (500) meter water depth.

Ms. Higgins: That is correct. Some of the language that is reported in the Resolution kind of confuses our boundary designation between the Northwestern Hawaiian Islands and main Hawaiian islands by all the additional language about the sand spits and fall areas being covered. So, it is just a nuance there which I am more than happy to provide the correct boundary information, if you would like.

Ms. Yukimura: That would be helpful. Thank you. Then this report documents why the recommendation is being made?

Ms. Higgins: The 4(b)2 report is actually just one (1) part of a proposed rule. It actually only looks at the impacts of the designation of critical habitat. There are three (3) supplemental reports to the proposed rule. There is one (1) that has the biological report. It is a draft report that actually looks at biological needs the species, that gives you information on how boundaries were determined for critical habitat. There is an economic report associated with it where we look at the economic impacts of the designation and the 4(b)2 report actually looks at weighing those impacts of the designation against the benefits of the designation for the Hawaiian Monk Seal. So, that 4(b)2 report is that weighing process one (1). The proposed rule actually puts the three (3) documents together.

Ms. Yukimura: And did you do a study on the impacts to the people and lifestyle of the area that is being proposed for designation?

Ms. Higgins: One (1) of the important things about critical habitat is that it implements a consultation process that is specific to Federal Government actions. So, it actually only work under Section 7 of the Endangered Species Act. It has do with acts carried out by Federal Government, that are funded by the Federal Government or permanent by the Federal Government. The everyday activities that you are referring to do not have the federal nexus, so to speak. It does not have Federal permitting associated or Federal funding associate with it. So, it is not subject to any type of critical habitat consultation process. We do not actually consider those to be impacted by the designation.

Ms. Yukimura: But there is a real concern that people will be impacted from cultural practices to fishing to so forth. So, there is no process of consultation?

Ms. Higgins: We actually have gone through the proposed rule stage. We have had two (2) public comment periods associated with the proposed rule stage. We are actually in the process of reviewing those public comments that we received. We had public hearings on all of the main Hawaiian islands, six (6) different public hearings throughout the main Hawaiian islands to listen to public testimony on this particular issue. So, we do get those in particular we get all of those concerns and information. What I am trying to really back to you, I guess, is that those particular actions that you were referring to do not actually have that Federal nexus. So, the critical habitat designation does not prevent people from going and using the beaches or from doing subsistence fishing because they do not have those Federal permitting associate with the activities. While these boundaries are drawn on the map it is to identify to Federal Agencies where they need to be taking into consideration what actions that they are doing so they come to us and consult and make sure whatever they are doing is not going to hurt the habitat to the point that monk seals cannot use it in the future.

Ms. Yukimura: So, you are giving us a whole different take or framing of the habitat boundaries...saying that the main purpose is to pull all the Federal Agencies that do work in that area and make sure that their actions are not harming the endangered species.

Ms. Higgins: The habitat, specifically, actually because they are already held to a standard of making sure that the Federal actions are not harming the species. So, critical habitat is specific to habitat. It is the second layer to that same consultation process that they are already having to do throughout the main Hawaiian islands. This second layer is combined into the consultation process so anybody going through Section 7 now, likely if this rule would become final then would do that second step to the consultation. If they have no Section 7 consultation goes on now we are not going to see any impacts to those activities in the future either.

Ms. Yukimura: Okay.

Ms. Higgins: For that designation.

Ms. Yukimura: So, let me try and translates because it sounds technical language.

Ms. Higgins: It is technical.

Ms. Yukimura: What I am beginning to understand and you may have to help me here, if I am not understanding correctly, is by drawing the...what is called, the critical habitat boundaries that does not give you the power to regulate human activity within that area?

Ms. Higgins: That is correct. We do not actually have any addition authority over those areas. Instead, what we do is we ensure within those boundaries that Federal Agencies that are moving forward with projects consult with us. So, it is really about responsible Federal planning as they move forward with actions and making sure that they take the extra step to look at the habitat as well not just whether or not monk seals are there every single day.

Ms. Yukimura: Okay. So, it is actually a control on Federal Agencies.

Ms. Higgins: That is correct.

Ms. Yukimura: And it forces them when they are doing anything within the area, say Sea Grant, which is federally funded, does an experiment or something in the ocean. Then they have to consult with you if that area that they are doing the experiment in is part of the critical habitat designation, is that correct?

Ms. Higgins: That is a general description of it. There are some additional technicalities in the sense that basically when they are moving forward with an action they need to determine whether or not that action could affect monk seal and whether or not it could affect critical habitat? Whatever action they are doing actually is not going to cause any impacts then they do not have to go through the consultation process. It is just that extra layer just to make sure that you stopped and considered this through your process.

Ms. Yukimura: It is like an EA and EIS.

Ms. Higgins: Exactly.

Ms. Yukimura: You do a threshold check and then if it does show you have impacts then you have to do a more intense consultation.

Ms. Higgins: Exactly, yes.

Ms. Yukimura: Where does the rules, like about roping off a sleeping monk seal on the beach come from?

Ms. Higgins: The seal protection zones, that were referred to and things like that. We actually have a lot of volunteers who actually will go on the beaches and put those up. They are actually kind of an education tool and outreach tool to really let people know that this is an endangered species, that it needs its rest, that people need to not be so close to it, that they could be disturbing the seal, but also to keep and make sure that people understand that it is a wild animal. You do not want to approach it that closely, too. It is really about an education tool for the public. There are not specific boundaries associated with those.

Ms. Yukimura: You are saying basically that designating this area as a critical habitat does not give the Federal Government or any other layer of government the power to promulgate regulations about fishing or boating, or anything like that?

Ms. Higgins: It does not give them any authority that they already do not have, no. So, I mean our Fishery Management Division already has that authority to make regulations for fisheries. They already have that authority, critical habitat does not change that authority. It does ask them to consider when they make regulations for fishing if it impacts monk seals and their habitat. But it does not change their authority.

Ms. Yukimura: Does the critical habitat designation trigger the possibility of regulations?

Ms. Higgins: From our analysis so far with the impacts what we are talking about with Federal nexus, we are talking about fisheries and talking about commercial fisheries that fall under the Federally managed programs. With monk seals we see an overlap a little bit with the bottom fish fisheries. So, they will be consulting with us. But they have been consulting with us already for years now regarding their impacts to monk seals. One (1) of the tricky things about critical habitat you have to go and identify within the critical habitat what the essential features. Essential features for monk seals is having fish available for foraging. One (1) of the things that we already do under the Endangered Species Act to protect monk seals for jeopardy is to make sure that they have fish to feed on too. So, strangely enough the overlap already exists so the consultation has already taken into consideration. Those impacts that the fishery had on monk seals and we have not gotten to the point that we actually see the overlap is that great that there would have to be additional regulation. So, through our analyses what we have seen so far, is it is a minimal impact that the fisheries are having on monk seals. So, we really do not think there will be any regulation changes to the fisheries.

Ms. Yukimura: You only have the power to regulate commercial fisheries, so it is not subsistence fishing?

Ms. Higgins: No.

Ms. Yukimura: How do you define "commercial fisheries?"

Ms. Higgins: The commercial fisheries is actually federal managed commercial fisheries that fall under that.

Ms. Yukimura: And there is a definition that tells you whether you are in or out?

Ms. Higgins: Yes. For our Federally managed fisheries, yes. The three (3) mile zone is where we actually stop.

Ms. Yukimura: But it is not fishermen like Mr. Eguichi.

Ms. Higgins: Subsistence fishing is not federally regulated under our Federal regulations right now.

Ms. Yukimura: So, you do not have the power to determine that?

Ms. Higgins: The critical habitat is not going to change the subsistence fishing. There were concerns raised by fishermen about grant funding for some of these programs that have to do with fisheries and things like that. One (1) of the thing that I try to explain to people to get across the information is a lot of grant programs that are in place to funding fisheries have to do with giving information and when we are looking at consultations through the Section 7 consultation process, we are looking at that particular action itself. If the action is getting information that information is not going impact monk seals. It is not going to impact monk seal critical habitat. So, that is not likely to cause a change in the consultation process.

Ms. Yukimura: And would there be an overlap? Would there be an overlap or a common purpose to increase fish...the amount of fish in an area between the monk seal critical habitat, people or agencies, and our subsistence fishermen?

Ms. Higgins: The common goal to have that? Absolutely. I mean we all want to see our resources in a good and sustainable place so that everyone can co-exist and use them.

Ms. Yukimura: Thank you.

Mr. Kagawa: Thank you. I have an announcement. We have three (3) more registered speaker and this is last call for anymore. I am hoping that we can kind of get by these questions and do not take too long on it. But we will see. Councilmember Rapozo, go ahead.

Mr. Rapozo: Thank you for being here. So, you work out of the Honolulu?

Ms. Higgins: Yes, I do.

Mr. Rapozo: And the 4(b)2 report that you talked about, the five (5) meters versus the fifteen (15), was that dated September 2010?

Ms. Higgins: Yes, I believe so. Yes.

Mr. Rapozo: So, we have got a different report or is it the same one (1)? Unless there was another one (1). Unless..maybe it was a later draft. I am not sure.

Ms. Higgins: Are you referring to the five (5) meters?

Mr. Rapozo: Yes.

Ms. Higgins: I am sorry. Five (5) meters is what was in our proposed...

Mr. Rapozo: In September of 2010?

Ms. Higgins: That is what should be in the report. I am not sure why you would have fifteen (15) meters in that report.

Mr. Rapozo: That is fine. The other question and it is a follow-up. This project zone you are saying there is no defined protective zone?

Ms. Higgins: The seal protection zone is actually an education tool for the public. So, generally speaking we are encouraging our volunteers to reduce that amount of seal protection zone around the seal. But to make sure that that message gets across to people that for everyone's safety that there needs to be that space and distance.

Mr. Rapozo: So, there is no defined distance? It is up to the volunteer if they want to block off the whole beach because it is happening and that is why I am bring it up.

Ms. Higgins: I think the case that you are talking about actually has already been addressed locally. We do actually have some times that people get a little zealous in trying to protect seals. But just as well that they get...when these types of things happen we try to address them as quick as possible. So, we do actually talk to our volunteers when those types of things happen. It is good to hear back from the public when those types of things are going on. But at the same time we are trying to work with them as a whole to keep these areas pretty small.

Mr. Rapozo: So, what is reasonable? Why would they not put a reasonable amount? Why would they not use a standard amount because I think that is causing a lot of problem and some animosity between beach users and seals because they show up? They are not blaming...

Ms. Higgins: There are different circumstances that you would actually increase the boundaries for and that we would probably encourage them to increase the boundaries for. That has to do with how many seals are present, whether is it a mom and pop pair present at the site. It really is a cite specific thing. How much beach is available to use so that we can make sure that the seal has room and the people have room. It is better actually for us to not set a specific boundary that we can actually work within the environment that is available to the people and the seal.

Mr. Rapozo: But then it becomes very subjective based on the volunteer.

Ms. Higgins: Absolutely. So, one (1) of the things that you have to remember is these seal protection zones are an education tool. There is no...they are not going to be fined if they cross across the seal protection zone.

Mr. Rapozo: Let me just say this then. What your volunteers...they are not your volunteers but these volunteers are telling the people is that they are going to be arrested and I think that is the problem.

Ms. Higgins: Perhaps next time, you can just give us that type of information. Maybe these are singular incidents that we are talking about.

Mr. Rapozo: A lot of people will see this. I am hoping I can get a phone number that they can call.

Ms. Higgins: Well, I have told you. I actually got cards here. I am happy to...

Mr. Rapozo: Well, they need to know. Not me. They need to...the public watching when they come across overzealous volunteers who do they call?

Ms. Higgins: We actually have a seal sighting line that they are welcome to call and we can talk to them about these particular issues. That would not be a problem.

Mr. Rapozo: But I guess my concern is who do they call if their treated improperly at the beach? If they are told that they have to leave the beach or they are going to get arrested, who do they call?

Ms. Higgins: If they call the seal sighting line they will be put in the touch with the person who is the island representative and we can deal with those types of situations.

Mr. Rapozo: Who is the island representative here.

Ms. Higgins: We have our island representative here, Jamie.

Mr. Rapozo: Good, are you going to be coming up later? Okay. The other question, where does the State and the County fall into your consultation process. I know you talked about federally regulated activities. So, basically if a commercial fisherman that is not regulated federally, which I do not think the Federal Government regulates our commercial fishermen here, correct?

Ms. Higgins: It depends on the fishery. I do not believe that is a correct statement.

Mr. Rapozo: I do not know. I am asking. I really do not know. So, our commercial fishermen here, the people that go out and fish on the weekends or the week days and they sell their fish in the market. They are regulated federally?

Ms. Higgins: It depends on the fishery. So, it actually has to do with whether or not that fishery crosses over the State and Federal boundaries and whether or not it is managed under the Federal Management Plan. The bottom fish fishery, the example I provided of earlier, that is a fishery that actually has federal regulations associated with it with federal standards and it works with the State where they sometimes adopt management measures that are similar to Federal programs.

Mr. Rapozo: Okay. So, earlier I guess the impression I got and I think Councilmember Yukimura said she saw a whole different view. The critical habitat area is only for the federally regulated issues.

Ms. Higgins: Actions, yes.

Mr. Rapozo: So, you kind of made everybody feel that is cool I am just a fisherman and not regulated federally. So, I do not have to worry. If they set up the habitat three (3) miles out, I still can fish. But that is not true. What I am hearing is certain fisheries, and I do not know if Kaua'i qualifies, are going to be bound by the no-fishing.

Ms. Higgins: So, it is not a no-fishing designation.

Mr. Rapozo: Okay, what is it?

Ms. Higgins: I am afraid you might have misconstrued that. There is actually a consultation process that is associated with this designation. So, any fishery that is federally managed...

Mr. Rapozo: When you say "fishery" what do you mean fishery?

Ms. Higgins: What do I mean by "fishery?" It actually usually has to...when I refer to a fishery, I guess I am referring to how they break it down management wise. Bottom fish fishery was the example I provided before because they actually break it down into that management level. So, that is what I am referring to.

Mr. Rapozo: Who makes the determination? The State?

Ms. Higgins: It depends on who is managing the fishery. There are multiple managers of the fisheries. The State usually works with NOAA to identify our fisheries here.

Mr. Rapozo: I apologize for sounding like an idiot because...and I think the general public is so confused as well because there are so many different branches. So, a fishery...and let us just go to Fisheries 101. The fishery, let us just use Kaua'i as an example. We have bottom fishers, we have trollers, we have long liners. What would designate had a fishery? If I had a boat and I fished outside here at Nāwiliwili and I was just with a thirty (30) foot boat and I fished and sold my fish in the marketplace. What would that make me? What fishery am I part of?

Ms. Higgins: It depends on the species you are catching and the type of gear you are using. That is how they actually break it down.

Mr. Rapozo: I have a fishing pole and a lure and I am trying to catch some tuna.

Ms. Higgins: So, you are doing it commercially then?

Mr. Rapozo: Yes, I am selling it. Whatever I catch I can sell.

Ms. Higgins: You are probably talking about a State fishery. For the most of the part our tuna that is caught on the long lines, that is one (1) of our federally managed fisheries.

Mr. Rapozo: No long lines, just the regular boat. So, I will not be part of that..I would still be able to fish?

Ms. Higgins: Yes, this designation is about a consultation process. It does not put in place regulations.

Mr. Rapozo: So, what would I have to do? Do I consult? Would I have...I would not be required at all?

Ms. Higgins: No. The Federal Agency is responsible for consulting with us. So, it is actually whoever is managing that fishery is responsible for the consultation.

Mr. Rapozo: As far as you are know the only fishery right now being managed by the Federal Government is the long liners?

Ms. Higgins: No. What I was saying before is the long lines is an example of one (1) of our federally managed fisheries.

Mr. Rapozo: What is another exemplary?

Ms. Higgins: So, the other one (1) that we were talking about before that was the bottom fish fishery. Our swordfish, our short line. That is actually part of the managed fisheries that we work with.

Mr. Rapozo: Okay. So, they would be affected?

Ms. Higgins: So, they are actually subject to consultation through this process.

Mr. Rapozo: And that would mean what?

Ms. Higgins: It means they actually have to take into consideration whether or not their actions would impact monk seal critical habitat. When we are talking about long line fishery that is a "no" because they are actually not...

Mr. Rapozo: I am talking about the bottom fisheries now because I think that we have a lot of bottom fishery fishers, fishermen here, fisherwomen, fisher people, here on the island, actually a lot of them. They are within the three (3) mile potential critical habitat. I know you said that one (1) of the items that the Federal Government looks at is the availability of fish for foraging by these seals.

Ms. Higgins: That is that correct.

Mr. Rapozo: Basically what would...our bottom fishers would be, I guess, threatened. That if in fact this is a critical habitat we...they would not be able to catch fish because the seals need to have fish.

Ms. Higgins: The designation puts in place that consultation process which I was explaining before. In the bottom fish fisheries, actually the example that I walked through before, we actually already do consultation on the bottom fish fishery and because there is an overlap between what actually...right now when we are looking at the consultation process without any critical habitat in place, we consider whether or not the action might harm monk seals. Well, one (1) of the things that you cannot do to an endangered species

is take away its forage, right? You cannot take away the things that is needs to eat and survive on without having potential impact. So, that is why I am say that bottom fish fishery is already consulted on. W have already looked at those potential impacts. Now critical habitat designation as a whole becomes much more than the forage. We are looking at pupping habitat and we are looking at significant haul out areas. But because forage gets called into place there is that overlap between the consultation exists and the one (1) that we are putting in place. What I am saying to you is the consultation is not likely to change and we are not expecting that the fisheries regulations are going to change as a result of this critical habitat designation.

Mr. Rapozo: Well, it could.

Ms. Higgins: Down the road, it could if other circumstances environmentally were to impact the bottom fish fishery. But it is more likely that under our sustainable management practices that we are using right now for bottom fish fishery, that we are talking about annual catch rates. We are not talking about closing fisheries.

Mr. Rapozo: Thank you. That is all I have.

Mr. Kagawa: Councilmember Nakamura.

Ms. Nakamura: Jean thank you for answering all of these questions which is I think is very helpful. I wanted to ask you what is your timeline for your final document or plan?

Ms. Higgins: For the critical habitats designation?

Ms. Nakamura: Yes, for the critical habitats.

Ms. Higgins: We are actually past due with our critical habitat final roles. We are still trying to go through all of our public comments and make sure that we really considered all of the ones that we have received in the process. So, we are just working towards that deadline as soon as possible.

Ms. Nakamura: So, do you expect to have a final plan this year?

Ms. Higgins: This year? Yes.

Ms. Nakamura: So, sometime this year?

Ms. Higgins: Yes.

Ms. Nakamura: And what has been nature of the public comments at least from Kaua'i?

Ms. Higgins: From Kaua'i? If we broke it out, I would have to think about that one (1) like breaking it all out because we have heard a lot of comment throughout. There is a lot of ocean users concern, But we had a lot of people on Kaua'i also...you know, we get kind of a mixed bag so to speak. We do get the people really concerned about the ocean resources and concerned about potential restrictions on those resource and then there are other people who are

actually quite happy with the idea that we will be protecting those resources for future use. So, we get comments from both ends of the spectrum really.

Ms. Nakamura: So, the relocation of the monk seals from the Northwestern Hawaiian Islands, to the main Hawaiian islands. Is this part of that critical habitat review or is that a separate process?

Ms. Higgins: It is actually a separate process. It is actually a management...it is actually under our recovery planning coordination process. So, we actually work with our Science Center and our Recovery Team to try to come up with management and research activities that might be helping the Hawaiian Monk Seal. So, in doing that we actually have to get a permit to do research and management activities. That is where that NEPA process was triggered and we actually had to go through permitting process and that was one (1) activities that we are considering through that process.

Ms. Nakamura: Where are you in the process?

Ms. Higgins: In the process? We are actually in the process right now of trying answer public comments for that particular one (1), too because that...actually through the NEPA process went out for public commenting. So, actually we are really considering the different comments that we received about all of the different actions we are trying to move forward with because it was not specific to translocations. It actually has to with all sorts of research and management things. It had to do with behavioral modification research and things along those lines. We are really trying to answer the public comments that we received as a whole and then will be moving forward with the process.

Ms. Nakamura: Then again, were the comments pretty polarized? I am more concerned about the relocation aspects.

Ms. Higgins: The relocation aspect of it. That is one (1) particular aspect we are actually taking serious reconsideration on. Right now there is a couple of things with regards to the two (2) staged translocation. We think it is actually a great opportunity for us to really be able to help monk seals because we have a population that is declining significantly on the Northwestern Hawaiian Islands. But we may not have all the pieces of puzzle in place right now to move forward with that stage of planning. So, we are seriously reconsidering that portion of it.

Ms. Nakamura: For the monk seals in that are in the main Hawaiian islands, what is happening with the population?

Ms. Higgins: In the main Hawaiian Islands right now? We actually are seeing growth here in the main Hawaiian Islands. We are seeing pups born every single year. We are estimating the population is around...between one hundred fifty (150) and two hundred (200) seals through the main Hawaiian Islands. This is actually a really positive thing for Hawaiian Monk Seals to actually see growth in a particular area since we are seeing such a significant declines in the Northwestern Hawaiian Islands.

Ms. Nakamura: Is consideration being given to what that impact would be of adding more seals to that already growing population?

Ms. Higgins: Absolutely. I mean, that is what the NEPA process is all about actually, is looking at those potential impacts. That particular action that you were talking about was actually a two (2) staged translocation. It was a temporary move from the Northwest to the main Hawaiian Islands and then back again to the Northwestern Hawaiian Islands. So, the idea behind that is to use this main Hawaiian Island area for the first three (3) years of life for Hawaiian Monk Seals to get them past the hump that they do not seem to be surviving through during the first part of the early years in the Northwestern Hawaiian Islands. Then before they become reproductive active to put them back in the Northwestern Hawaiian Islands population where in the Northwest and the main Hawaiian Islands if you are an adult monk seal you survive just about the same. But if you are a juvenile monk seal, you actually have a much lower chance of survival during those first (3) years in the Northwestern Hawaiian Islands.

Ms. Nakamura: My last question has to do with one (1) of the testifiers earlier asked whether NOAA or anyone is focusing on propagation and was wondering...

Ms. Higgins: Propagation as in? I am sorry.

Ms. Nakamura: Fisheries and I guess this would be related to...

Ms. Higgins: And thing like that? I guess there are so many branches of NOAA, like you said it can be a little bit confusing keeping track of everyone. We have different Divisions that work on really helping communities trying to answer that question of where can we be growing our fish, where can we be helping our ecosystem and that is our Habitat Division. They are actually a really good branch that is able to work with our communities and look at fish habitats. So, those are some key phrases that you might be familiar with and have heard where they are actually taking about trying to propagate out fisheries and talking about how we can do that. But we also use our Sustainable Fisheries Division who puts forward the regulations that we were talking about before with the federally managed fisheries that kind of work hand in hand in trying to keep sustainable numbers of fisheries so that we can have that type of propagation happening.

Ms. Nakamura: Thank you very much for educating me about this.

Mr. Kagawa: Councilmember Hooser?

Mr. Hooser: Yes, thank you and I suspect that this extensive discussion is stuff that we will not have to have with everybody else. Just to kind of restate because I think it is very, very important that you are here and the issues that you raised. The establishment of our critical habit will not restrict recreational and subsistence fishing by and itself?

Ms. Higgins: Right. So, we are not seeing restrictions to recreation fisheries. Some of the comments that you might hear from people is that there are recreational fishers that are subject to federal reporting that they do give us information and things like that that they were worried there is a federal nexus there. But providing that information does not have to do with actual regulations on the fishery.

Mr. Hooser:
managed funded...

So, the primary impact would be on federally

Ms. Higgins:

Managed fisheries.

Mr. Hooser:
Okay. Thank you very much. Thank you, Chair.

Managed fisheries and other programs?

Mr. Kagawa:

Chair Furfaro.

Chair Furfaro: Yes. First of all, for everybody that is out there, this Council at four o'clock (4:00) begins a series of Executive Sessions with our Attorneys in Honolulu. I just wanted to share that with you. So, Mr. Kagawa, we need to close things in the next forty-five (45) minutes. We have eight (8) speakers and they all have six (6) minutes. That takes us right to four o'clock (4:00). I just wanted to make that announcement. I would like to ask you, are you folks producing a fact sheet because this is exactly my reference earlier to the fact that people are confused. I am thirty-eight (38) years in the hotel business just on Kaua'i and I was twice President of the Hotel Association. So, I am entitled of news bulletins. Hotel Association thinks that the area for the seal is shrinking. What you just told me is they are no getting a standard room, they can actually get upgraded to the Presidential Suite which might mean the whole beach. What do we do to inform the people because we have hoteliers that now have people that want to be able to still share the beach? But what are the facts for something like that?

Ms. Higgins:

So, the facts...

Chair Furfaro: No, I am just asking the question because we need to...number two (2), what authority do you folks have on the fining? How do you fine people? What law do I refer to where the fines are disclosed and so forth? We need to do that and those are things that we should have fact sheets on because many, many people are could be confused. I would certain like to offer the person who is the liaison on making sure that both the monk seal is safe and the recreational people have opportunities. I would like to ask or make a request for him to come by and meet with me. I would like to talk with him in those terms. Also you said something else to me and I am using these terms so that...because they very expressive. You find areas where the seals can have an abundance of food. So, I do not know how you term that, but I am trying to say is, does that mean some of the better area where known fish are populating is an area that they can identify as probably the prime area or what are we saying there?

Ms. Higgins:

I am sorry, could you clarify the question?

Chair Furfaro: Yes, sure here it comes. Everybody can eat well in the Coffee Shop. These guys seem to be able to get the gourmet restaurant because you are saying you have got to make sure there is a significant population of fish in those areas that we preserve. Did I hear that?

Ms. Higgins: So, I think I am understanding what you are saying. But that is not exactly what I was trying to get across.

Chair Furfaro:
right.

What I would like is clarification to make it

Ms. Higgins: Sure.

Chair Furfaro: So, the abundance of fish that are shared with humans for the seals' designated area, in fact, has impact on where you say these prime spots should be? That is a consideration, an abundance of fish is a consideration for keeping the monk seals' area designated.

Ms. Higgins: So, for critical habitat designation, what you are referring to is the essential features that I mentioned earlier and the essential features are things that we describe...the U.S. Fish and Wildlife Service does as it as well when they do designations for critical habitat. Basically what we are doing is we are trying to describe the things that a species need within its habitat to survive and recover. So, what we do is we actually ask what is important for that seal to keep going? That means those areas such as the pupping and nursing sites and most species it also means forage. Having fish and things like that available.

Chair Furfaro: Prime forage?

Ms. Higgins: Well, we do not...

Chair Furfaro: That is my question.

Ms. Higgins: We actually did not define it as prime forage and one (1) reasons why is morning seals are generalist foraging species. So, they forage across a wide variety of habitat and they have individual foraging preferences that vary from individual to individual. So, that actually makes them unique in a couple of ways that they are using slightly different habitats. They are eating a lot of different species of fish. But it depends on the individual, on their tactics for forages, and things like that on the areas that they are actually foraging in. That is why you see such wide boundaries for these foraging habitats.

Chair Furfaro: You answered my question. The last particular piece, is your concern for the pups in the Northern Hawaiian Islands related to the fact that the predators that consume them, like Great White Sharks and so forth, are abundant in the Northern Hawaiian Islands as well?

Ms. Higgins: We only actually have one (1) atoll out in the Northwestern Hawaiian Islands where we have an abnormally lark shark activity. All of the other five (5) areas that we look at, we actually just have regular predation rates. They are not abnormal at all. It is not like Great Whites. We are actually dealing with a particular issue with Galapagos Sharks at the French Frigate Shoals. So, it is particular to one (1) atoll and we have looked at mitigation.

Chair Furfaro: And is that atoll French Frigate Shoals?

Ms. Higgins: Yes, it is.

Chair Furfaro: Thank you, Mr. Kagawa.

Mr. Kagawa: Thank you. Any more questions? If not, next registered speaker and I would like to remind members that we kind of want to get through all of our speakers before four o'clock (4:00).

Chair Furfaro: Thank you for coming.

Mr. Sato: Next registered speaker is Greg Holzman, followed by Elia Herman from the DLNR Sanctuary. State your name please.

GREG HOLZMAN: Good afternoon, Greg Holzman. I am a federally managed bottom fisherman on the island of Kaua'i. My main areas are Ni'ihau, Ka'ula Rock, and the Na Pali coast, all of which are being looked at as potential expansion areas for the National Marine Sanctuary. They talk a lot about these things are not going to affect us and they like to talk that well it is only a couple individual fisheries. Yet, they cannot tell what is going to tell in the future and they will be the first ones to admit it. They are now looking at federally designating as species of management concern, all of the species within the near shore waters. These will all be starting to be regulated for fishery management, federally in the near future. So, all of these have the potential to become under the consulting of these monk seal management people. None of that means that we are not going to be able to fish. But these are used as tools by environmental groups which have massive agendas to stop the taking of food, what we call food, they call "extractors." They like to call us extractors. They like to try and find ways...they have a lot of money and they use a lot of lawyers to find ways to use the Endangered Species Act, use the National Marine Sanctuary Act, use the Marine National Marine Mammal Protection Act and all of these things are already in place. The Sanctuary is just looking to add another layer and to add more species within its jurisdiction. That is adding a lot of new federal regulations, creating a lot more bureaucracy causing more confusion with the fishermen. We are not saying that anybody here does not have a really good intentions, but they will admit that there are people out there that can utilize these laws in ways that they never sought to be used as. Take for example the idea that they want us to report if we have interactions with the monk seals because they can then better get these monk seals to find ways to get them to stop.

Mr. Kagawa: Greg, that is your first three (3) minutes. You have another three (3) minutes.

Mr. Holzman: So, anyway it is a takes. So, what it is there is a zero (0) takes on monk seals and every time there is an interaction with the monk seal, it is considered a take. If they start...if we documenting all these takes the groups will use those to shut down...they already have a lawsuit in place from Ulua fisheries with the State of Hawai'i to stop this fishing. These are the kind of things that we are concerned about. We are concerned about all of these things. All we are asking with this Resolution is that the County Council has heard the people of Kaua'i, have said at this time we cannot...we cannot support the expansion of this Sanctuary, we are all for education. They do a great job with their education program. Jean Souza does a wonderful job over here. We help whenever we can. But we are against the expansion. There are plenty of laws in place already that just need to be enforced to take care of these species and that we are under an incredible amount of not only confusion, but we are under an incredible amount of threats from all of these federal regulations and putting it under a Sanctuary is not going to help. Ni'ihau is a prime example. Mr. Robinson has stated many times publicly that he is looking to the Sanctuary to put a one (1) mile exclusion...one (1) to two (2) mile exclusion zone around his island and that would completely take away all of my fishing grounds. You say that swimmers will not be able to swim on the beaches. That is not true. Well if you go to Miloli'i, if the sanctuary comes into Miloli'i and there are some pups on the beach at Miloli'i, if it is a Federally managed Sanctuary, the chances of you not being able to go in there and go shell hunting or picking or whatnot are greatly enhanced. Those are the kind of things we are not

sure about and they cannot tell us because they are too vague. They have not made their mind up and we all feel that once this draft plan comes into effect, the chances of really revamping it and changing it completely is going to be extremely hard. We might be able to get a few sentences changed and what not. But what we have seen from them working with us, it is so limited that we are not getting the kind of working one-on-one relationship that we had hoped for in the beginning.

Mr. Kagawa: Thank you, Greg. Any questions? If I could ask, members to keep it brief, please. Councilmember Yukimura.

Ms. Yukimura: Thank you. Thank you Greg. You mentioned early in your testimony that near shore waters will be managed federally?

Mr. Holzman: No, the species are being looked at. West Pack...I am on the Bottom Fish Advisory Board with West Pack and they have been looking at all of these near shore species to be Federally management that right now it is all in Federal waters. A lot of these areas are not in...these species are not found in Federal waters at this time. But if these things occur, these species are already in a designated federal management for the species and you talk about a lot of this eco-system management where all of these things become entwined and they really cannot tell in the future what is going to happen. I mean we never...twenty-five (25) years ago we did not think that Federal Managers were going to take over our fisheries, you know, and there is a lot of things that changed very quickly. Then all of a sudden these tools get used and so these are things we have been worried about from the beginning.

Ms. Yukimura: So, you do not think commercial fisheries should be regulated?

Mr. Holzman: Well, you know, we did fine. We have done fine for a long time and I am not saying it should not be regulated. I definitely do not support Federal management. I do not believe in federal management of our local fisheries. I believe in State management. Now the State of course is limited to its funding and what not. But that is my personal belief. I have seen more problems from the Federal management side of this thing then I have found solutions. They backpedaled on several different issues as far as the quotas go, as far as the deep seven (7) bottom fish, as far as how their overfished status was. They shoot first and ask questions later in many of these situations and that is what we are worried about.

Ms. Yukimura: But the decline in large fish is really extreme. So, I mean this whole thought about wanting our children to live in a sustainable world, it seems like something has to be done to stop the decline of the fisheries because at some...because my understanding of ecosystems is that it does not happen gradually. There is a collapse of the fisheries and then it is so hard though bring them back.

Mr. Holzman: I guess it is the difference between people who believe that taking away the guns of the people will stop the criminals from getting guns.

Ms. Yukimura: We do not want to go there.

Mr. Holzman: What I am really trying to get at is the point that taking away fishing from fishermen is not the answer. Education, which the Sanctuary, I will be the first one to say is great. That is the way to go. Get the Sanctuary to educate the fishermen. They do a great job and we need to really just do that.

Ms. Yukimura: So, human behavior has never shown to actually change only with just education. But zero (0) takes on monk seal, is every interaction with a monk seal, like you were talking about, being required to report, is that a take?

Mr. Holzman: You are not required to report it. But every interaction with a monk seal is considered a take.

Ms. Yukimura: Is considered a take?

Mr. Holzman: Yes. I mean we went to a Monk Seal Workshop and that was one of the things that the managers were worried about was that every time we went in and documented an interaction with monk seals that these would be considered a take and that these would accumulate and then that can be used against us to shut down certain fisheries.

Ms. Yukimura: Yes, that seems a little counterproductive because if you define it as a take, who would want to even report it?

Mr. Holzman: Yes. JoAnn, I am not saying that management is not important in fisheries either.

Ms. Yukimura: But I do not know if that is correct.

Mr. Holzman: I mean, I just want to state that the Management Officials...

Chair Furfaro: I need to state something. Our rules states that, she asks you the questions now.

Mr. Holzman: I am sorry.

Chair Furfaro: You respond only to the questions because you were given the full testimony time.

Ms. Yukimura: So, last question. You mentioned if there was a monk seal on the beach at Miloli'i that you would not be able to...

Mr. Holzman: There is a chance if there were monk seals on the beach at Miloli'i with it being designated a Federal Sanctuary, that National Marine Fisheries Service Enforcement Officials could stop you from going on the beach. They have already said they might have spatial and temporal restrictions within the Sanctuary. They just cannot tell you what they are going to be at this particular time.

Ms. Yukimura: Okay, because I see a lot of heads shaking behind you. We are just trying to get at accurate statements. That is all I am trying to understand. I know this, I am not going to ask any more questions of

Greg. But I want to get it clear because you have included it in your testimony and I want to get clear what will happen if that is Law or if it is not? So, the other thing is if this is a monk seal right now on the beach at Miloli'i they have the right to rope it off, I would guess, right?

Mr. Holzman:

Yes.

Ms. Yukimura: But they do not have the right...you are saying that designation would give them an extra right to stop people from going into Miloli'i?

Mr. Holzman: They could. Under the Sanctuary there are lots of things that they can do that they cannot necessarily do now.

Ms. Yukimura:

Thank you, Greg.

Mr. Kagawa: We are going to take a quick caption break. Oh, we can go until four o'clock (4:00)? Let us continue. I am going to ask members to refrain from questions so we can have the courtesy of letting everyone speak. We have an appointment at four o'clock (4:00) and we will probably be continuing this item after the Executive Session. I do not know if any you of plan on staying two (2) hours or so this...after four o'clock (4:00) to resume. So, we will continue.

Mr. Sato:
Malia Chow.

Next speaker is Elia Herman, followed by

ELIA HERMAN: Aloha. Thank you so much. My name is Elia Herman. I work for the Department of Land and Natural Resource and I am the State Co-Manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary. I think this conversation has been really important because as Chairman Aila wrote...this was actually in a letter to the Editor in the Honolulu Weekly. It is not official testimony for this. It was a published letter to the Editor. These conversations have to be based on facts and I think we have made a lot of progress today in trying to establish what that is. So, I have been...I think everyone here has put a lot of time and energy into all of this and people care very much. These are really, really important discussions and important things to understand. Though I am very grateful to the Council and to everyone who had participated. I just wanted to address a few things. One is that the State of Hawai'i, the DLNR is committed to active management of our marine resources. But as people have pointed out, we do not have...we get less than one percent (1%) of the State's budget and we cannot do that alone. We need to do it in partnership. We need to work with community and that is what we are doing more and more all the time. We need to work with other Agencies. That is the only...these kind of partnerships are the only way we will be able to effectively manage our resources. So, the Sanctuary is a way that the State of Hawai'i is actively managing our resources and as it has been pointed out you have before you the Compact Agreement that was signed in 1998 by Governor Cayetano. This affirms a couple of things. It says we have not handed over our authority or our ownership or management of our resources in any way. But we are going to work together to do better. That is what that says. Also, it says in terms of fishing, and subsistence fishing is crucial. Fishing is crucial to Hawai'i. it is crucial to our livelihoods. It is the way that we live here. Nothing, no regulations could ever go forward in State waters until they were first approved by the Board of Natural and Land Resources. So, again nothing...nothing is being handed over. It is how do we all work together

to do better because like everyone has said, we need the resources to be here now and into the future. So, there have been so many interesting comment it is hard to pick out the different pieces. I guess I also just want to point out we have two (2) letters from the other Governors, from Governor Lingle and Governor Abercrombie, again supporting this process. What the Sanctuary is going through right now the review of our Management Plan to look at again, what make the most sense for Hawai'i? How do we, again, work together better and share in the *kuleana* of taking care of these resources? Nothing is going to happen in the State without the State support. This is not NOAA putting something together and then showing it to the State. We are working together. This is my full time job. I have other staff from DLNR who work on this with me. So, it is not them doing it and bringing it to us. So, all of the plan that is written, that is being written, we are doing that together and we are doing it with extensive input from communities dating back to 2010 and over twelve thousand (12,000) comments were submitted.

Mr. Kagawa: That is your first three (3) minutes.

Ms. Herman: Yes. And ongoing consultations with everybody in this room as well, as well as others. Also, this is just one other thing I wanted to point out is that this process is going through both the National Environmental Protection Act, the NEPA process, as well as the State Process for Environmental Review. So, we are meeting both requirements and again that is another illustration that this is not just the FEDs coming in and doing something. But this is us together evaluating what makes sense. As part of that we have to look at socioeconomic impacts and the cultural impacts. We are not going to do anything that harms our ability to continue to live here in the way that we want to in Hawai'i. So, how do we make a Sanctuary here that...there is a lot of fears and concerns and I understand that. But how do we look at what the opportunities are for us all to do better together and to manage the resources in a Hawaiian way that looks at *mauka* to *makai*, that looks at challenges like water quality issues? How do we take that all into account and do better? Partner with communities, do restoration, help bring this back so that we can all continue to use these resources because a number of Councilmembers have said now and into the future. Thank you very much.

Mr. Kagawa: *Mahalo* Elia. If we stick to the rules of no questions until we get done with everybody. Next registered speaker, please.

Mr. Sato: We have Malia Chow, followed by Nina Monasevitch.

Mr. Kagawa: I want to thank Malia and Elia for coming from O'ahu. *Mahalo*. I know it is very important to you. Thank you.

MALIA CHOW: Thank you very much and good afternoon to the County Councilmembers. I just wanted to thank the leadership of the Chair for bringing this important issue to the agenda and it gives us an opportunity to really explain a few things about the Sanctuary. Also, I wanted to thank Ross Kagawa for bringing this important issue here because it does allow to us have an important dialogue.

Chair Furfaro: Hold on just a second. Are we seeing a PowerPoint? No.

Ms. Chow: No, it is not a PowerPoint. But there are a couple of documents that we wanted to share with you. So, just for the record my name is Malia Chow and I am the Sanctuary Superintendent for the Humpback Whale Sanctuary. We have been leading this process for the last two (2) years. We have been listening to communities across the State and the reason we launch into this Management Plan Review is because we are required by law at some point to look at additional species. It is not something that we made up. It is something that we thought was the right thing to do and that is what we are moving forward with. So, what we have handed out and is available to you is a current timeline that we are on for our Management Plan Review. We expect to have a draft out for the public by this Fall. So, by the end of this calendar year. So, let me reemphasize, there is no draft that has been reviewed by anyone. I think people have made that clear. There have been a lot of stakeholder meetings. We have met with the fishermen. We have met with communities across the State. We are in the process of putting together a plan based on science, based on local knowledge that will be shared in a more comprehensive document. That draft before it goes final will have a series of another round of public meetings. There is the opportunity to revise it based on input that we get from others. So, it has been very important to us that we have open transparency in everything that we do and that is why it is important to us to take the time and come and be able to answer questions because I do hear a lot of misinformation and I do have some concerns that misinformation continues to be perpetrated about the Sanctuary. It is our hope to correct that and have an open dialogue with anyone that is interested.

I am not going to take the full six (6) minutes because I do want to concede my time. There are so many who wanted to speak before the Council. But I wanted to follow-up on a comment that Councilmember JoAnn Yukimura brought up about how are we invoking traditional Hawaiian values in our process? It is something that as an overarching consideration, we think the traditional management has been fundamental to everything that we do and we brought together working group of our Sanctuary Advisory Council to really look at the values that management should be based on? So, what we are sharing...it is on our website. We have made copies for each of the Councilmembers here, is a document that really speaks to the importance of looking at management from a cultural lens. It is important that it is not just science based, but also based on local knowledge much of which the fishermen have. What I want to end with is we share that value of protecting the ocean and ensuring that the ocean is available for the next generation. I thought it was timely to have the Waimea students here because we are taking the long view, that is the generation that we are planning for. With that we just want to make sure that you understand that we want to be responsive and work closely with the County Council as we go forward. Thank you very much.

Mr. Kagawa: Well, you know, I kind of regret that you went now because I am sure there would be a lot of questions. But I have to be fair to everyone. But they can always contact you too and I can get that contact to them.

Ms. Chow: Thank you very much.

Mr. Kagawa: *Mahalo*. Next registered speaker.

Mr. Sato: Nina Monasevitch, followed by Gordon LaBedz.

NINA MONASEVITCH: *Aloha.* Good afternoon. I would like to start by saying that I found this Resolution to be not even Council worthy based on, pardon?

Chair Furfaro:

You have to state it one more time, maybe.

Ms. Monasevitch: I am sorry. Nina Monasevitch. Koholā Leo is my organization. I apologize for that. I find the Resolution to be based on assumptions, falsehoods, and I find it to be very unprofessional written. That is based on my understanding of scientific research of what is going on in the oceans and my understanding of the Sanctuary. Its inclusive statement of "ocean users" does not include myself nor many others who are ocean users that I personally know. The six thousand (6,000) signatures on their petition were collected based on misstatements and misrepresentation. I have been scuba diving, long distance swimming, boating, kayaking in Kaua'i waters since 1978. The degradation and health and diversity of ocean life I have witnesses is alarming. Here are some of the facts taken from published research about the reality of the ocean and marine life. From an article that just came out of the number two (2) underreported news of 2012 entitled *Oceans in Peril*. "We thought the sea was infinite and inexhaustible. It is not. The overall rise in ocean temperature has led to the largest movement of marine species in two million (2,000,000) to three million (3,000,000) years according to scientists from the climate change and European Marine Ecosystems Research Project." A February 2012 study of fourteen (14) and eighteen (18)...fourteen (14) protected and eighteen (18) unprotected ecosystems in the sea demonstrated that this previously healthy sea is now quickly being depleted of resources. An international team of scientists conducted the study over a period of three (3) years and found that in well enforced marine reserve areas the fish populations were five (5) to ten (10) times greater than the fish populations in unprotected areas. The work of these scientists encourages the establishment and maintenance of marine reserves. Net entanglement and by-catch is the number one (1) cause of death for Humpback Whale and all marine mammal. Over three hundred thousand (300,000) deaths are documented annually. There are no laws to protection whales from net entanglement. There are actually no laws right now that protect whales other than the one hundred (100) yard limit and some of the Federal Laws that have nothing to do with the Sanctuary. These actually numbers, these three hundred thousand (300,000) a year is estimated to be much higher. Vessel strikes is the number two (2) cause of death for Humpback Whales. There is extensive scientific documentation that speed is the main factor. Other Sanctuaries have...

Mr. Kagawa: Excuse me, that is your first three (3) minute. You have three more (3) minutes..

Ms. Monasevitch: Thank you. Other Sanctuaries have speed limits which have effectively helped prevent boat collision in the United States and the North Atlantic. Some of the other facts. Fisheries are collapsing. There is a lack of no take zones in Hawai'i. There are no marine life conservation districts on Kaua'i yet they are on every single other island. Less than point eight percent (0.8%) of the world's ocean are fully protected from extractive or destructive activities. Large no take marine reserves have been shown to blunt the effects of extensive commercial fishing by offering a refuge for sea life to breathe and spawn providing for healthier fisheries as the fish swim into surrounding areas and thus ensuring coastal economies. Because the ecosystems are healthy, they are also more resistant to damage caused by pollution, climate change, and a wide range of

other development activities. I am going to skip some of this about the coral reefs and pollution because that information is out there. But water pollution has caused five hundred thirty (530) ocean dead zones and counting worldwide. Ocean acidification threatens the entire marine ecosystem and food web. For all of these reasons Maui and Hawai'i Counties have supported the Sanctuary and have adopted Resolutions in support of protection in 2010. The protection of marine mammals and all marine life in Hawaiian waters is not just an ecological, biological, or cultural concern, but also a matter of economic necessity for the Counties...all Counties of Hawai'i because the clean and healthy ocean environment is the engine that drives Hawai'i's visitor oriented economy. Hawai'i ocean based tourism generates eight hundred million dollars (\$800,000,000.00) a year and provides thousands of jobs. Koholā Leo is submitting petitions to the Council from members of the public who have been informed about the published scientific research documenting the reality of the ocean and marine life degradation. I have one (1) copy of the petition with me that I would like to leave.

Chair Furfaro: Would you leave that copy with us? We will make copies.

Ms. Monasevitch: Yes, thank you.

Mr. Kagawa: Thank you. Next registered speaker.

Chair Furfaro: Nina, thank you.

Mr. Sato: Gordon LaBedz, followed by Colleen Ogino.

GORDON LABEDZ: Hi, I am Gordon LaBedz. I live in Kekaha and I am retired Family Physician. I am here representing the Surf Rider Foundation. I always like to thank elected Officials for doing this. It is a thankless job. Somebody is mad at you all the time. I had the honor in 1986 of being one of the Founders and Organizers of the Surf Rider Foundation. We were in our thirties and we really watched the ocean die in front of our eyes and here I am thirty (30) years later and it has gotten quite a bit worse. The Surf Rider Foundation is now has eighty (80) Chapters and we are international and we are still watching the ocean go down. I am asking you to here today to vote "no" on this Resolution. This Resolution essentially says if you read the title, you will vote "yes, I am for it." But the text, it basically says we are opposed to protecting the ocean. That is what it says. Let us face it. The fact of the matter is the ocean is not owned by fishermen. It is not owned by Kaua'i residents. It is owned by the people of the United States. The people of the United states, the visitors who come here and visitors who never come here own that ocean and it is the Government's responsibility to take care of that property. That is public property. If you use it every day you are connected to it. But it is not your property. It is not your orchard to pick. It belongs to all of us and it is going downhill and it needs protection. We are asking you to vote "no" on this Resolution because this Resolution says we do not need protection, we do not want protection. I am asking you here today to support the Maui County Council and the Hawai'i Island County Council, who said "yes," go forward with that Management Plan, protect our oceans and more because quite frankly the Surf Rider Foundation has been very outspoken in criticizing the Hawaiian Humpback Whale Sanctuary and even though I work with them, they have not done much in fifteen (15) years to protect Humpback Whales. They have done nothing to protect the ocean and it is time that they step up to the plate and do something. I know that does not make my neighbors and fishermen neighbors in Kekaha happy, but in

the long run we will all be better off if there are some rules and regulations and some protections to the ocean. So, I am going say one more time, please vote this down and rewrite a Resolution that says "yes" the Kaua'i County Council supports protection.

Mr. Kagawa: That was your first three (3) minutes.

Mr. LaBedz: Thank you.

Mr. Kagawa: Thank you Gordon. Next registered speaker.

Mr. Sato: Colleen Ogino is not present. Our next registered speaker is Maka'ala Ka'aumoana, followed by Jean Souza.

Mr. Kagawa: Aloha. Please state your name and you may begin.

MAKA'ALA KA'AUMOANA: I am new to him, huh? Aloha Councilmembers and *mahalo* for this opportunity to provide testimony on this agenda item. I am Maka'ala Ka'aumoana and I testify as a member of the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council. I currently hold the Conservation seat. I have participated over the past two (2) years in the process of reviewing the management options for our sanctuary. As Conservation seat, I was included in every working group and committee's work as well as that of the Advisory Council as a while. I am personally aware of the inclusion of all perspectives and *mana'o* included in the thinking, planning, and drafting of the current draft plan. This has been a sound process of review broadly based and culturally guided. Fishing issues were prominently represented. Most of you know me and have heard me testify numerous time over the years. You probably can recall a common theme, transparency and collaboration. The focus of my work over the past twenty-five (25) years on Kaua'i has been to apply the life lessons I have learned and the mantra my grandmother taught me, take it to the source. For the Sanctuary and my role on the sac, that mantra reads community based. That is what the draft Management Plan is all about, local control. The Hanalei Watershed Hui and Hui Maka'ainana O Makana have both participated fully in the process of developing the draft Plan and stand as community partners who each have unique issues and concerns about the marine environments in their communities, both in the Sanctuary today. Specifically in Hā'ena a community based subsistence fishing area has been designated for the *ahupua'a* and that *hui* has been actively engaged and sees the Sanctuary as a positive and supportive partner of that effort. They have no concerns about fishing issues and, in fact requested the Sanctuary adjust its boundary to align with the *ahupua'a* to provide support of the program and potential partnership of their community based work.

This Resolution is premature as the draft Management Plan will be out for public review later this year. This Resolution attempts to address a problem that does not exist. This is not the time to interfere in the review process. I request this Resolution be withdrawn and not move forward at this time. It speaks to fear and fantasies with little basis in fact. The draft Management Plan should be given a fair and open opportunity for review and comment before our Government tries to fix something that is not broken or influence the outcome of a public process yet to come. I would be pleased to respond to your questions another time about the Sanctuary as a partner to Kaua'i communities. You have my personal commitment to an open and locally based process of review. Before I leave the podium, I do want

to show you this. This is the 2013 Hanalei Moon and Tide Calendar and you will note the NOAA Sanctuary logo at the bottom. It could not have been produced without their partnership and that partnership and that partnership also of the Papahānaumokuākea National Monument and Jean has been kind enough to schlep a whole bunch up here for you. So, we give those to you today as remembrance of the partnership that exists currently with the Sanctuary and communities on Kaua'i. *Mahalo*.

Mr. Kagawa:

Mahalo, Maka'ala.

Chair Furfaro:
of time before we go to next speaker.

Mr. Kagawa, I need a housekeeping moment

Mr. Kagawa:

Go ahead.

Chair Furfaro: The message that I am sharing right now is directed to the Administration across the street. It is my intention to continue with our calendar today and I still would like to make sure that we have time to talk about the roads at Lāwa'i Beach. So, I need someone from the Roads Department, the Fire chief or representative doing review of their grant agreement for the CERT Team, as well as EMS requirements, County Engineer, and the Housing Department. So, when we do break for Executive Session I would like to make sure that we make contact with the Administration before they feel it is *pau hana* time for them. It is Wednesday. It is not *pau hana* until we are done. You have the floor.

Mr. Kagawa: *Mahalo*, we will take one (1) more registered speaker and we have to take a break for a tape change.

Mr. Sato:

Our last registered speaker is Jean Souza.

JEAN SOUZA: Hi. Good to be here. For the record Jean Souza, I am a resident of Kaua'i. so, unlike some previous speakers, I live and work here and this is my life. Unlike some previous speakers I want to say personally in my immediate family, I am part of a family with four (4) generations that have been doing subsistence fishing. I currently do not do it myself now. But my son is active in it with his classmates and having a great time. So, for allegations that are made that we are not in the ocean, we do not know what we are taking, we are not here are, is so false. I am extremely disturbed by it. We are a program that is very inclusive. We have a program that involves many people on Kaua'i and we have invited many folks to become involved with us. We have acknowledged there are problems out there and rather than just grumble about it, we need to work together to try to solve it. There is a tremendous movement on Kaua'i and elsewhere in Hawai'i to take care and to take care more than ever before. In some respects harking back to the olden days. So, the challenge is to bring folks together to do that and rather than just grumble and say no, no, no. Hey, how can we work together to try to solve some of those problems? I think there is a common value that we share. I think there are common goals we could work towards. So, this is an open invitation to try to get there. I have some observations about the Resolution. I think as it stands currently there are still continuing mischaracterizations and misinformation. I think that there are some significant changes that still could be made and I appreciate the few changes that you incorporated of what we suggested. But I have, if you interested, seven (7) more pages that were not incorporated. That is kind of it for now. I am willing to come

back at a later time if there are a few minutes. I am wondering if perhaps you would like to ask questions of Malia and Elia since they have a plane to catch and will not be able to come back after the Executive Session. But I will be able to.

Mr. Kagawa: Thank you. I just want to kind of respond since you looked at me and asked me to incorporate the other seven (7). But the Resolution I proposed is to support the fishermen and our *keiki* to use the beaches and enjoy the beaches and enjoy the beaches as I did when I was young. My Resolution is not to support the efforts of NOAA and the DLNR in making or creating more habitats and what have you. That is why I did not incorporate those. Clearly, we have a disagreement on what Resolution would have been better. But I did not incorporate yours on purpose. Thank you.

Ms. Souza: Would you like a response?

Mr. Kagawa: No, I was just explaining myself.

Chair Furfaro: At this time I am going to take the Committee back. I gave it to Mr. Kagawa as a courtesy as it is his Resolution and so forth.

Mr. Kagawa, the presiding officer, returned Chairmanship back to Chair Furfaro.

There being no one else to provide testimony, the meeting was called back to order, and proceeded as follows:

There being no objections, the rules were suspended.

Chair Furfaro: I would like to have the two (2) individuals up. This is a Council Meeting at my discretion. So, I am is going ask them to come up. Jean, you can sit with them, if you like, please. Ladies, thank you first of all from coming over and Mr. Kagawa, thank you very much for running the testimony. First thing that I want to say is the fact that we here at the table, we represent all of Kaua'i, okay? We are stewards for Kaua'i, okay? We have obligations to all people who had chose us to represent them. The reason that I was supportive and, I controlled the agenda, to put Mr. Kagawa's Resolution on this agenda is to let you know it is important to our people that we get the facts straight. For the lady that almost overwhelmed me with testimony...I mean, for me to find out she is not even connected to the conduit of creating this piece is worrisome. It is worrisome. I will tell you why because there is so much confusion about conservation plans in general, whether it is from the sea or the birds. There is a lot of need for facts. I personally look at this Resolution and I say two (2) things. We need to get testimony in before this schedule of April or May of this year. This is your piece. You gave it to us?

Ms. Herman: Yes.

Chair Furfaro: And this is where the product is supposed to come out from. One (1) way to do that is support the Resolution because as I stated earlier, it is only a policy statement from the Council worthy of consideration. But I do not agree with everything that is in it myself. So, the other option is for me to take the pieces that I have and write testimony into the fishermen that have subsistence for their family deserve a voice. I want to make sure I can send

testimony into that fact. The confusion that exists, I have to tell that you is overwhelming and if you give me something that I can clarify some facts in that, I will get those out. I do not care if I have to fund in the next budget a fact sheet, it better be factual and we will get it out so that we can all *kōkua* and we can all be good stewards. Just the fact that nobody can really tell where the fines are for the marking of the seals, how much space they are entitled to, and so that is enough confusion in itself. At that time I used to be a pretty good hotel guy and I can see the fact of the matter there are many, many people employed based on the destination and the beach has to be shared. We have to get that through. So, the gentleman in the back has been willing to meet with me and so we can talk about some of those things. But we need to represent the voice of Kaua'i people whether we send an individual testimony, like we are currently doing at the State, whether we send it directly to Mr. Aila, whether we support the Resolution. It is a way for this Council...you have to understand it is a way for this Council to communicate the concerns of the people that we represent. So, I am going to give you a few minutes here to answer questions from the Council and I am going to start with Councilmember Yukimura, if she can lead in brevity. Okay, you have the floor.

Ms. Yukimura: Thank you, Chair. It is hard to be brief about a very complex subject. But I really appreciate Councilmember Kagawa's introduction of this Resolution because it has stimulated really important conversation. My question is about your draft timeline and I think I had shared concerns with the Chair in terms of when it would be appropriate for the Council as a body or the Council as individuals to submit input as representatives of the people of Kaua'i. Your draft timeline shows that right now you are in a State public comment period or you are drafting EIS segments and you will finalize the draft Management Plan around April.

Ms. Herman: Yes. Let me address that. That is correct. It will be internally finalized. We would be happy to come back to the County Council and due a briefing with you. But it officially goes out to the public probably late Fall of 2013 when there is actually a draft document you can read.

Ms. Yukimura: Okay. When that draft document is available, then everyone will really see what the recommendations are rather than speculate what they might be. Then there is a ninety (90) day comment time so that we could take a look at all of the science and the traditional...all of the things that you will incorporate into the plan, see what you are actually recommending and then react to it at a time that would also allow for review of our input and changes, if you see that changes are warranted.

Ms. Herman: Correct.

Ms. Yukimura: So, we have time in the Fall of this year to submit testimony that could influence the plan and its outcome.

Ms. Herman: Definitely we would encourage that and would appreciate that input at that time. Also, I think I can speak for both of us that we are committed to...like you said, this is a very complicated issue and really appreciated what everyone had to say. To come back and I think I speak for both of us, to continue to have these conversations, continue with the education, to make sure that all these conversations are happening based in fact. Then of course, all of the issues are considered, subsistence fishing and others. So, we can continue those conversations and do that education. But during the ninety (90) day public

comment period is a fantastic time to provide concrete comment on an actual draft plan.

Ms. Yukimura: Because I share the Chair's concern that we have a responsibility as representatives of the island to reflect their concerns. So, I want to make sure that we will have to opportunity. But it may be as somebody said, it is premature right now because not everything is in yet and we do not even know what your recommendations...your draft recommendations are.

Ms. Herman: Correct.

Ms. Yukimura: Thank you very much.

Chair Furfaro: Again, before I recognize Mr. Kagawa, as I mentioned at the beginning of my statement, deferring this until things are clearer is an option for us as well, besides voting it down or not supporting it. But I want to let you know, the only time we will have in April is the 24th. The only time this Council will have for this is the 24th of April.

Ms. Herman: And I do not know...I think April is not the necessary time. We could certainly work to find a good time with your schedules. Did you want to add anything?

Ms. Chow: If it has not been apparent in some of our remarks, this plan will not successful unless we get the support from the community, the County Councils, and the State. So, it is in all of our best interest to take the time we need to make sure that you understand what we are doing and to make sure it is representative and meets your goals of what is needed for the island of Kaua'i. We have heard a lot from a very vocal group of people. But I can assure you in our public comment processes to date there has opinion an equal number if not more number of people who feels that the ocean needs protection. Our job is to balance that and facilitate a process that allows moves forward.

Chair Furfaro: Just so you know, before I give it to Mr. Kagawa. The testimony was split down the middle.

Ms. Chow: Yes, you are right.

Chair Furfaro: Down the middle. It was not supporting either one side and that is why I wanted to say we represented all the people and this thing is cut down middle. Mr. Kagawa, you have the floor.

Mr. Kagawa: Well, to reiterate your point, it is cut down the middle, but I would say the majority of the local people living on Kaua'i was more than the ones opposed. So, there is a lot of testimony from the mainland and O'ahu, that came in. Just to let you know. But anyway, so is one of the plans...I mean one of the major plans for the monk seals, just to let the public know, to recover them is to bring them from the Northwest Hawaiian Islands to Kaua'i?

Ms. Chow: Just to be clear, that is why I was so pleased that our colleague from NOAA, Jean Higgins, stated that it is not a Sanctuary proposal.

Mr. Kagawa: That is not a proposal?

Ms. Chow: It is not a Sanctuary proposal.

Ms. Herman: Fisheries. I think that this illustrates there is still a lot of confusion and education that we need to continue.

Mr. Kagawa: No, but that is the plan from Fisheries to do that because I had a meeting, while with Senator Kouchi and Senator Tokioka at the Civil Defense Office and that was one of the proposals they talked about. The people above you, I believe.

Ms. Chow: No, let me address that. You will not see that in our draft Sanctuary Plan.

Mr. Kagawa: Okay. But it is maybe in their plan, another Division of NOAA. So, that is where the confusion is because I met twice with you folks, with the people at Civil Defense and you folk and I have this right here. It is so confusing as to who controls what and what is being proposed and what each proposal affects? So, I mean, I have been in Office for two and a half (2 ½) months. It has forced me to try and get comfortable with the issues. But I am still not even close to being comfortable.

Ms. Herman: Let us keep talking.

Mr. Kagawa: So, if you are expecting that I know everything, I do not. But I do know this, where my stance is, is to support our children, born and raised here, lived here all my life and I love my life. I mean what we have, the ocean and everything. I just want the young ones that come up to have the same opportunities as I had. That is why this is not personal or anything against you folks, against any environmental groups out there, I am just...that is the kind of person I am. I fight for you *keiki*. I said if I got elected I would do that and that is exactly what I am doing. Now, I do not know how the vote is going. I hope I have the votes to approve it. But like Chair Furfaro said, all we are doing is recommending other people who really control the decisions that will be made to listen to our position. I want to thank you all for all the time that you have spent with me and we will continue to spend more time.

Ms. Herman: Absolutely.

Mr. Kagawa: Thank you.

Ms. Chow: Thank you.

Mr. Kagawa: Do you have anything you want to comment?

Ms. Herman: I just wanted to say that I think we share the exact same value and that is what we are trying to figure out and we are committed to continuing to work with you to have these conversations and to sort out questions and to make sure that we all get to the place that we want to be.

Mr. Kagawa: Thank you.

Chair Furfaro: Okay. So members, I only bought us fifteen (15) minutes with the Attorneys. I want to say here are our options. Our options are to actually vote on the Resolution, which I have already stated my position. I

have issues with a couple of the items and I will not be supporting it. The second piece is to basically defer it date specific April 24th. By that time, some of the clarity might come through on this particular piece and right now I have to tell you, it really breaks my heart to see people like Uncle Charlie, Dennis, that have come and spent as much time as they have here today and leave. They really represent not only the historical fishing processes here, but the cultural pieces. Uncle Charlie is one (1) of the best *upena* fishermen/net-throwers on the island and I am going to be supporting a deferral for April 24th. But I cannot make any motion. It is up to you folks. JoAnn.

Ms. Yukimura: Chair, I would like to suggest, especially because especially in April we will in the throes of our budget hearing, if we could do it towards July because that seems to be when the draft plan will...is it?

Chair Furfaro: That is not what this says.

Ms. Yukimura: This says May. Do I have a different sheet than you? It says the recording...

Ms. Nakamura: The comment period is going to be in September.

Chair Furfaro: Oh, mine does not go that far.

Ms. Yukimura: Well it should be...it should be just before or at the beginning of the ninety (90) day comment period, I am thinking.

Ms. Chow: That is a good...if...so on your timeline, if that is the case, we are looking at Fall of 2013 is when our public comment period will be.

Ms. Yukimura: So, when will the draft plan be out?

Ms. Chow: For public review and comment?

Ms. Yukimura: Yes.

Ms. Chow: Fall of 2013, if we stay on schedule. Let me just remind you we have a goal of getting this right. We are not going to release a plan unless we made sure that we have talked to all the folk. So, our plan to date is to have it out for public comment Fall of 2013.

Chair Furfaro: It is true it was supposed to be done last year? Somebody gave testimony to that effect today.

Ms. Chow: Yes, with any planning process. So, on your schedule we had a public comment period that just ended. I will let Elia speak to that. But we had to allow for the State to meet its requirements.

Chair Furfaro: I need a date. I cannot defer it indefinitely. I have to have a date that fits with our space to defer it date specific.

Ms. Yukimura: Can we say our first meeting in September then?

Chair Furfaro: I would like to start in August, if it is our first meeting.

Ms. Yukimura: Is that all right? Will you have enough data to know where you will be going so we can...or will we have something though look at in terms of the gathering of awful all your information?

Ms. Chow: The State and Federal Government are involved, we send it out for internal review for our leadership to review it. So, we can certainly give you an update of where we are. I cannot guarantee that we will have a document cleared in time for you to be looking at it in your hands.

Chair Furfaro: Okay I am looking for something. Before I give the floor to Mr. Kagawa, I am looking at the 14th of August.

Ms. Yukimura: Chair.

Chair Furfaro: I am going to give Mr. Kagawa the floor and come back to you.

Mr. Kagawa: I am just waiting to bring the meeting back to order. I want to make a motion to approve.

Chair Furfaro: We are at a point here that the Councilmember has asked the meeting to come back to order and the reality is that you can make that request. I would have appreciated the courtesy for the Chairman to continue what I was doing, since I gave you the courtesy of running the meeting.

Mr. Kagawa: I will withdraw.

Chair Furfaro: Thank you very much, sir. The date again, I want to confirm is August 14th.

RICKY WATANABE, County Clerk: First Council Meeting in August.

Chair Furfaro: Okay? I am not going to take anymore from you folks. I need to do business here. Nadine and then Councilmember Hooser.

Ms. Nakamura: Chair, I would have concerns doing it in August. If they are saying that the target date is to try to get a public draft out by September, then that is when it is going to be a public document and everyone can respond at that time. So, we need to do our meeting after it becomes public and we have had a chance to digest the document and then come up with clarifying our concerns that could be in the form of a very specific Resolution in response to what is written.

Chair Furfaro: I understand your pointed and my point is I would like to be the first ones to comment and hear some of the things that have been promised to us today in advance of you getting the report out. But I could yield to the Vice Chair's recommendation. Mr. Hooser, you have the floor

Mr. Hooser: I just wanted to briefly say that I share the concerns of the Chair. I appreciate the conversation and discussion. I would like to thank Councilmember Kagawa for introducing it and facilitating discussions. But I am unable to support the Resolution as it stand now. I believe that we should at the minimum wait until the report is out so we can make informed comments.

Chair Furfaro: Thank you, Mr. Hooser, Mr. Rapozo. Do you wanted to restate your position? I will give you the floor again and I want to remind everybody, I have to call the meeting back to order. So, go ahead.

Mr. Hooser: Really quickly, my mic was off and I wanted to be clear to the public that I am unable to support the Resolution as it is now written and support deferring until a time when the draft is ready for the public and we can comment on that and make an informed decision at that point. Thank you.

Chair Furfaro: Thank you. Mr. Rapozo?

Mr. Rapozo: Thank you. You know, I think it is important and I can understand the apprehension and the request to wait for more information. But I think we represent our constituents and I have seen the petition here with three hundred fifty-one (351) signatures, fifty-nine (59) of them are from out of the State or even out of Country. But it is basically saying they support the protection of the Hawaiian Humpback Whales. Everybody supports that. I want to make sure the public understands what the Resolution says. At the end of the day, every Resolution says it "Be It Resolved," that is the action item, if you could even call it that because this carries no weight. But let me just read it because I know Scott read it, but it was like page 5 and 6. But the first "Be It Resolved" that the Council of the County of Kaua'i supports the efforts of Kaua'i's ocean users, the local fishermen, the ocean gatherers, traditional users, and other ocean users to limit further regulations in Hawai'i's oceans waters to an expansion of Federal authority over Hawaiian waters. That is the first "Be It Resolved." That is what the constituents have come up and asked me as far as support. The second one is that it request that the State of Hawai'i to take an act role in management of marine resource as required in the State Constitution, plain and simple. I support that one hundred percent (100%). I agree with that. Let it further be resolved that the it requested of both Department of Land and Natural Resources, which is the DLNR, the State, and the National Oceanic and Atmospheric Administration (NOAA), that any documentation of existing conditions or development of new plans or the Sanctuary must include equally balanced studies that describe measure to ensure the economic and cultural survival of the people, including protecting subsistence fishing and native Hawaiian cultural practices and gathering rights and preserving the *aina* and recognize the needs of fishermen, traditional ocean users and ocean gatherers. That is what I heard from you today. That is what we are trying to achieve. That in fact we want to reach the area where...well, I did not hear from all of you because some I think, the Sanctuary or protected area only really looks at the endangered animal and not the users. Then the final Be It Further Resolved that is requests NOAA through all of its branches and Divisions, because there are so many of them, in fact I do not know how many there are, but it sounds like there is a lot, to exclude the main Hawaiian Islands in its recommendation to designate a critical habitat for the Hawaiian Monk Seal and to refrain from including any other species into the Sanctuary until a complete analysis and public disclosure takes place and until all legislative requirements are met. I do not think that is unreasonable. I really do not. I think we are all saying

the same thing, everybody got paranoid or scared that oh my gosh the Council is doing a Resolution. But this is the Council's input if it passes. I do not think it will.

But I guess my point...I will be supporting the approval because I think this is important to Kaua'i's people. Yes, we have got testimony from people that are planning to move to Kaua'i and people in New York. Those people, although I value their testimony, they do not live here. They have not lost the ability to take advantage of our...what I would call our cultural assets here, the beaches. I think it is a right. You know I think what bothered me the most, I want to a meeting in Hanapēpē and the consultant that NOAA hired asked me if I felt that the use of the beaches was a right or privilege? I said it is a right and she disagreed. The Constitution gives us the right to use the beaches, the people. So, it is a right for our people. What I am saying is I am going support this because I think NOAA needs to know and everybody who is involved with this process needs to understand that there is one (1) component that has to address and that is that equal balance. Yes, we need to protect our endangered species, but we have to protect our people's right to use our resources, really. I think that is important and that is why we are here. The monk seals, the whales, the endangered species, shearwaters, they all have a voice. They all have a voice through all the Environmental Agencies and Federal Government and so forth. Our voice is for the people of Kaua'i. They do not have the lawyers. They do not have the Environmental Lawyers that can go fight for what they believe. That is our voice. At the end of the day the process is going to take its course. But I believe our job, my job, and we all have different constituent and that is what makes this process wonderful, that is why there are seven (7) of us, six (6) today. But we all bring the different ideas to the table and we vote and at the end of the day, major majority wins. But I am saying that I support this Resolution because the Be It Resolved, I believe, takes us to where we want o go and it just really expresses the people's feeling on what we should do and that they want to be heard and they do not want to be threatened. I have to tell you, if there is so much misinformation out there, which is, we are not doing a good job with educating the people. We hold community meetings...mine was Sunday at ten o'clock (10:00) in the morning at Hanapēpē. Sunday at ten o'clock (10:00) in the morning. There was a few people there, myself and Senator Kouchi were the only politicians there. Sunday at ten o'clock (10:00) in the morning. Most people go to Church on Sundays at ten o'clock (10:00) in the morning. So, my point is this, if we want the public to be informed when we as the...everyone including the Council, needs to educate them and I do not think that that is happening. That is why the rumors fly around and there is misinformation. But at the end of the day, what I believe the Be It Resolved that is on the Resolution is exactly the message I think you all should have when you start planning your plan. Thank you.

Chair Furfaro: You are welcome. Members, I want to say a couple of thing to you. First there was Jean Higgins in testimony today and I would like here on our next visit to Kaua'i to visit with me because I have a ton of questions for her about things that are mixed into the confusion here. Number two (2) I appreciate the fact that this gentleman in the back, James, right? You are going to make an appointment to see me as well to talk about the miscommunication of beach management. As a courtesy to Mr. Kagawa, I would like to first vote on his Resolution. I will not be supporting it because there are certain things in there that I do conflict with. Then we will entertain a motion to defer date specific. My third choice of dates is now October 9th. So, that is just for your information. JoAnn, because I am really anxious to get to a point with a motion.

Ms. Yukimura: Thank you, Mr. Chair. I would request that we act on a deferral first which is actually the parliamentary protocol partly because I do not want to vote against this Resolution. I feel like there are many good parts of it. But I also feel there is a lack of clear understanding, a lack of information, a draft plan is not even out this presumes what will be in the draft plan and that I do not think we should do that. I think if we pass a Resolution we want it to be accurate and we want it to reflect accuracy and also a fair balanced position that represents the people of Kaua'i. I think we still have a chance to do that. So, I would prefer that we act on a motion to defer.

Chair Furfaro: Somebody make a motion here because I cannot.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Rapozo moved to approve Resolution No. 2013-38, seconded by Mr. Kagawa.

Ms. Yukimura moved to defer Resolution No. 2013-38 to October 9, 2013 seconded by Mr. Hooser.

Chair Furfaro: A motion of deferral supersedes a motion for approval. But before I say anything more, Mr. Kagawa, your work is well appreciated, very much. I might write separate testimony on the subject matter. Mr. Clerk, I guess we have the motion to defer, date specific, October 9th. Can I have a roll call vote, please.

The motion to defer Resolution No. 2013-38 to October 9, 2013, was then put, and carried the following vote:

FOR DEFERRAL:	Hooser, Nakamura, Yukimura	
	Furfaro	TOTAL - 4,
AGAINST DEFERRAL:	Kagawa, Rapozo	TOTAL - 2,
EXCUSED & NOT VOTING:	Bynum	TOTAL - 1,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Chair Furfaro: Thank you very much. This agenda item is now complete for the day. Thank you.

There being no objections, the Council recessed at 4:28 p.m.

There being no objections, the meeting was called back to order at 4:30 p.m., and proceeded as follows:

EXECUTIVE SESSIONS:

Chair Furfaro: May I have the County Attorney up, please?

There being no objections, the rules were suspended.

Mr. Castillo: Council Chair, if I may, I would like to read ES-605 through ES-609 just once. Thank you. So, this pertains ES-605 thru ES-609.

ES-605 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

ES-606 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

ES-607 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

ES-608 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

ES-609 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4 and 92-5(a)(4) and (8); and Kaua'i County Charter Section 3.07(E), the purpose of this executive session is to consult with the Council's legal counsel to receive legal updates, overviews, and recommendations for purposes of obtaining Council approval of proposed settlement of a workers' compensation claim. This deliberation and/or decision making involves matters that require the consideration of information that must be kept confidential as, inter alia, it concerns significant privacy interests. The significant privacy interests relate to a medical history, diagnosis, condition, treatment, or evaluation, and which, pursuant to state or federal law, including Health Insurance Portability and Accountability Act, are protected from disclosure.

There being no objections, the meeting was called back to order, and proceed as follows:

Mr. Kagawa moved to convene in Executive Session as recommended by the County Attorney, seconded by Mr. Rapozo.

Chair Furfaro: There are enough of us here today because we are a quorum of four (4) on a majority of six (6) so that I will do a roll call vote and I need to have that done now please, for Executive Session.

The motion to convene in Executive Session for ES-605 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

The motion to convene in Executive Session for ES-606 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

The motion to convene in Executive Session for ES-607 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

The motion to convene in Executive Session for ES-608 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

The motion to convene in Executive Session for ES-609 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: On that note, for those of you that are here for Executive Sessions, we are going to lock you in, if you are here for an Executive Session. If you are not here for an Executive Session, please wait outside because I am not going to defer anymore items because people are not here for the day. This agenda is getting too full. Okay? So on that note, Mr. Clerk, I would like to go directly into Executive Session. Then Eddie, lock the door.

There being no objection, the Council recessed at 4:32 p.m.

There being no objections, the meeting was called back to order at 6:28 p.m., and proceeded as follows:

Chair Furfaro: We are back in session. Could you read the item, Mr. Clerk?

C 2013-87 Communication (02/05/2013) from the Housing Director, requesting Council approval, to sell a residential property situated at 3874 Hunakai Street, Lihue, Kauai, Hawaii, TMK: (4)3-3-008:019, at an affordable leasehold sales price of \$305,000.00 or the appraised value, whichever is lower and to authorize the County Clerk to sign all legal documents relating to the sale of said property. The property was acquired utilizing the Neighborhood Stabilization Program Funds (NSP) which restricts sales to one hundred twenty percent (120%) and below of the Kauai Median Household Income: Ms. Yukimura moved to approve C 2013-87, seconded by Mr. Kagawa.

Ms. Yukimura: Three hundred and five thousand dollars (\$305,000.00) is higher than what we usually been approving for leasehold, so I just wanted you to explain how we got there.

There being no objections, the rules were suspended.

KAMUELA COBB-ADAMS, Housing Director: Normally we buy a lot of houses with CDBG Funds or HOME Funds which is restricted to eighty percent (80%) and below the median income. The funding we used in this case was NSP or Neighborhood Stabilization Program Funds which the minimum we can sell the homes up to a hundred twenty percent (120%) of the area median income – or

Kaua'i median income. The three hundred and five thousand dollars (\$305,000.00) was based on the appraisal done in December for leasehold sale. That is the appraisal price and that is also the agreed sale price and we are actually in escrow for that price with a family that is at a hundred percent (100%) of Kaua'i median income. That is a unique opportunity to reach that gap group. A hundred percent (100%) is the median income household and that is why it is at that level. It is also based on the appraisal sold levels not an arbitrary number.

Ms. Yukimura: Yes, good. Thank you. I am concerned about the leasehold restrictions and the security that enables us to keep it within the mission of our work which is affordable in perpetuity.

Mr. Cobb-Adams: In the leasehold sale – any sale or say if someone passes and they wanted to leave it to their child, it would restrict that passing or sale to someone within that... at or below hundred twenty percent (120%) of the Kaua'i median income. It would stay... the house will stay...

Ms. Yukimura: Affordable?

Mr. Cobb-Adams: ...for her family in that income range.

Ms. Yukimura: It would be sold to other qualified families, in other words.

Mr. Cobb-Adams: Yes, it has to be.

Ms. Yukimura: Thank you very much.

Mr. Kagawa: Occasionally I have Realtors that call me and ask, "what do you approve and where." But the 3874 Hunakai Street, where is that and what subdivision?

Mr. Cobb-Adams: I am not familiar.

Ms. Yukimura: Ulu Ko, I think.

Mr. Cobb-Adams: Right down as you pass the mall, you passing K-Mart and going down to Nāwiliwili, it is the first subdivision on the right.

Ms. Yukimura: It is down Nāwiliwili Road.

Mr. Cobb-Adams: It is a nice subdivision, nice area.

Mr. Kagawa: Okay.

Chair Furfaro: How long have you been with us?

Mr. Cobb-Adams: Six (6), seven (7) months.

Chair Furfaro: Okay, we will give you another seven (7) months...

Mr. Cobb-Adams: To learn all the subdivisions, okay, thank you.

Chair Furfaro:

Anymore questions for the Housing Director?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa: I am not real familiar with the leasehold category and I am sure I will catch up with time but if it is Ulu Ko subdivision that we are talking about, three hundred five thousand dollars (\$305,000.00) is probably what the land is worth right now. It is a very low price and being that it goes to affordable, I can support this.

The motion to approve C 2013-87 was then put, and carried a 6:0:1 vote (Mr. Bynum excused.)

C 2013-88 Communication (02/12/2013) from the Housing Director, requesting Council approval of a leasehold sale of a residential property situated at 5178 Kome Street, Kapa'a, Kaua'i, Hawai'i to Kaua'i Economic Opportunity, Inc. (KEO), "as is" in the amount of \$180,000.00 for a lease term of twenty (20) years and to authorize the County Clerk to sign all legal documents relating to the sale of said property: Ms. Yukimura moved to approve C 2013-88, seconded by Mr. Rapozo.

Ms. Nakamura: Kamuela, within a year about how many families would go through the use of this HOME, under this program?

There being no objections, the rules were suspended.

Mr. Cobb-Adams: I would have to get back to you. I will have to consult with KEO on that one – one of the non-profits.

Ms. Nakamura: Okay.

Mr. Kagawa: Same type of question – 5178 Kome Street, Kapa'a, where is that? Is that by the school, Houselots, Homesteads?

Ms. Yukimura: Here is a map.

Mr. Kagawa: Okay.

Mr. Cobb-Adams: I do not know the subdivision.

Ms. Yukimura: It is close to Saint Catherine's, it is off of Kawaihau Road.

Chair Furfaro: You still have seven (7) more months.

Mr. Kagawa: Very close to Kapa'a High School. What is the plan for KEO to do with that for the next twenty (20) years?

Mr. Cobb-Adams: What KEO will be doing is using that as a transitional home for homeless. They try to get someone down under, down and outs, they can live there for a fee – rent and they will use that as a transition to get into a market rate rentals or some other kind of living situation.

Mr. Kagawa: My next question is, what was the prior use of that home?

Mr. Cobb-Adams: That house was purchased by a family in a rent-to-own that the County had and that family chose to purchase a house in Anahola, DHHL land and pulled out of it. It has been vacant since then and has not sold, so this is another situation for us to take that house and put it towards a positive use.

Mr. Kagawa: Have we checked with the neighbors and checked how they feel about the KEO using it to have homeless people try and start with...

Mr. Cobb-Adams: I would have to talk with my Staff about that and get back to you. I can get back to you tomorrow.

Mr. Kagawa: Well, if the votes are there to approve... I have not much say on it. I do believe we should always check because when that kind of situation happens next to you, your family, or friends, you hear their side about it and they would like to be notified at least and treated with respect. *Mahalo.*

Chair Furfaro: I would like you folks to know that we are going to 7:00 for our dinner break and I would like to see if we can go through the Fire Chief and the County Engineer before that time.

Ms. Yukimura: Kamuela, this is for a family right? It is for a single family, is it not?

Mr. Cobb-Adams: I have to talk with KEO. Generally KEO what they will do is they will fix up and improve the house and in this plan, they are going to be fixing up the house and bring it up to a standards that has been vacant for a couple of years. It is not up to living conditions, so they will be improving the house to a much livable standard, and there are screening. Not anybody can live in transitional housing. It is transitional for a reason. But you have a good point and I am not aware of how that procedure goes, if KEO does it or if our Staff does the consulting but I will get back to you regardless of what vote happens. I will get back to you tomorrow.

Ms. Yukimura: Thank you.

Ms. Nakamura: Councilmember Kagawa brings up a good point by just being a good neighbor, notifying the neighbors, and then if things come up, that they have a contact number with someone from KEO, but just to be a good neighbor, that would be a good policy to follow.

Mr. Cobb-Adams: I agree. Thank you.

Mr. Kagawa: Are we under a time constraint? Would we be able to refer to Housing and have it approve in two (2) weeks?

Chair Furfaro: Kamuela, you heard the question, are we under any time constraints?

Mr. Cobb-Adams: Two (2) weeks, I think we can deal with.

Chair Furfaro: We can defer this to the Housing Committee next week, if you would like, and then the following week, get it out of the full Council.

Mr. Cobb-Adams: I am fine with that.

Chair Furfaro: Does that satisfy you?

Ms. Yukimura: Can you get whatever information in a week or would two (2)...

Mr. Cobb-Adams: I can get it tomorrow.

Ms. Yukimura: Then we probably do not even need...

Mr. Cobb-Adams: I would prefer that we do this as quickly as possible although it does not have today, I do not want to pressure you because you bring up good points. I do not mind resolving, I think we can resolve it and I will resolve it. It is a good point and I can get the answers tomorrow. The quickest possible, if you do not want to do it today, I can... I just ask to do it as quick as possible, I would like to move.

Chair Furfaro: Mr. Clerk, there is a possibility that we can set up a Special Council Meeting in addition to next week's Committee Meeting, right, just to handle this item? So, that is one (1) option and I will share the detail with you.

Mr. Rapozo: Let me try for another option to get this done tonight because when I read the item/communication, I obviously did not read every page of the lease but I read as much as I could. I was under the impression that it was "a unit" "a house" for "a family" as Ms. Yukimura talked about, and that it was not going to be an emergency shelter.

Mr. Cobb-Adams: It is not an emergency shelter, it is a transitional house and every transitional house that I know of or unit has been for a family. I want to make sure that I get everything right.

Mr. Rapozo: If you can get that confirmed tonight, if you have somebody's phone number that you can call tonight...

Mr. Cobb-Adams: I can get it tonight. I can get it in five (5) minutes.

Mr. Rapozo: I would be ready to vote for it if you can tell us...

Mr. Cobb-Adams: I will...

Mr. Rapozo: Typically KEO, they operate a transitional shelter or a transitional rental typically up to two (2) years. So, people apply for the program and I am only telling you this because when you call KEO or whoever you call... all I need to know is if it consistent with their existing transitional rentals. I

believe we have some Pa'anau and Lihu'e Court, so the families apply and they are very strict restrictions, requirements, and when they qualify, they go into the home and live there for up to two (2) years – up to twenty-four (24) months. That is how I understand the KEO transitional housing and if that is the case with that project, then I can vote on it tonight.

Chair Furfaro: Let me first excuse you from the stand and will move on to other business. When you do call, find out the length of time too? Is it two (2) years? And we will come back to this item.

There being no objections, the meeting was called back to order, and proceeded as follows:

C 2013-90 Communication (02/14/2013) from the Prosecuting Attorney, requesting Council approval to apply, receive and expend Federal Highway Safety grant funds from the State of Hawai'i Department of Transportation in the amount of \$10,700.00 to be used towards travel and training: Ms. Yukimura moved to approve C 2013-90, seconded by Mr. Kagawa, and carried by the 6:0:1 vote (*Mr. Bynum excused*).

Chair Furfaro: Mr. Dill, are you here for the next one?

There being no objections, the rules were suspended.

LARRY DILL, P.E., County Engineer: Yes, sir.

Chair Furfaro: I am going to make the next one (1) short but if you can come up, we will try to go through your things and then we will go to the Fire Chief.

C 2013-91 Communication (02/20/2013) from Council Chair Furfaro, requesting the presence of the County Engineer, to discuss the location of the "Speed Limit" signs along Lāwa'i Road and related matters.

Chair Furfaro: Thank you for being here this late but, Larry, on this one, I think there is a miscommunication and I am going to ask you for some help on. The area is of most concern and were laid out in that Resolution was the fifteen (15) miles an hour speed limit in front of the Lāwa'i Beach Resort, when surfers and swimmers get out of the water, they come up on the road and seem to pop out between the cars with people going by. There needs to be a series of those fifteen (15) miles an hour speed markers placed in that area because people going to the beach and people coming out of the water, they are not being seen by the cars that are parked on both sides. There is a group of ocean recreational people that would like to be able to discuss the placement of those signs. The signs went in but they went in on the far end and they went in on the piece going down by Kukui'ula but people do not know the speed limit with the people coming out of the ocean. I will give you their name tomorrow and if you can tell me that you will meet with them to review and satisfy the intent of what this Resolution was, I will be very appreciative.

Mr. Dill: I will be happy to do that.

Chair Furfaro: We are doing a lot of attention to this walking and safe routes and so forth and this is a very dangerous piece in front of

Lāwaʻi. You already have the Resolution on the speed limit but you just need to get the signs placed appropriately for those ocean/recreational people.

Mr. Dill: Okay.

Chair Furfaro: If that is okay with you folks, I would like to get a motion to receive this item and then we will put it back on when Engineering meets with those individuals.

Mr. Kagawa moved to receive C 2013-91 for the record, seconded by Mr. Rapozo.

Mr. Dill: I will be happy to meet with the individuals and get their information and I can work it out with them and provide a report back to you in writing instead of having Council...

Chair Furfaro: That will work. This is an item to receive but I will get you the names of the ocean/recreational people that need help.

Mr. Dill: Okay.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2013-91 for the record was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

LEGAL DOCUMENTS:

C 2013-92 Communication (01/29/2013) from the Fire Chief, requesting Council approval to indemnify the Arch/Diocese, Saint Catherine's, Catholic Mutual and their employees and agents per acceptance of the indemnification language contained in the "Unaffiliated Organization Agreement" and the "Facility Use Indemnity Agreement," for the usage of Saint Catherine's facility for the Community Emergency Response Team (CERT) Training Program: Mr. Kagawa moved to approve C 2013-92, seconded by Mr. Rapozo.

There being no objections, the rules were suspended.

ROBERT WESTERMAN, Fire Chief: I have no comments.

Ms. Yukimura: I do not have a question, I just happened to talk to some people from Princeville and they are just so pleased that the CERT Program is happening and being reactivated. Thank you. I know this one (1) is in Kapa'a but you are doing that also in other places on the island, right?

Mr. Westerman: Yes. That is the reason why we are asking for this facility to get the classes going again. Neighborhood Center's have schedules of a lot of people and this is a multi-day class so we are trying to find

facilities that; one (1) will support a large enough group and you are right, we are getting ready to start a new group in Hanalei, March 5th. We have just started another one and where we are actually using my training facility upstairs in the evening for that group here in Lihu'e and the Catholic Church in Kapa'a has agreed to host several classes if we needed to hold them in Kapa'a.

Ms. Yukimura: Thank you very much for that work, Chief. If people are interested in volunteering, are you still open to volunteers?

Mr. Westerman: Yes, absolutely. It is on the County's website and if they want to E-mail kfdcert@kauai.gov, that is our CERT coordinators E-mail and also that information and the class schedules are online on the County's website.

Ms. Yukimura: So maybe you can just explain the acronym CERT.

Mr. Westerman: CERT is a Community, Emergency, Response, Team. It is one (1) of the many pillars out of FEMA and how to help communities in disasters and this particular one (1) makes the community taking charge of themselves and better preparing themselves for disasters.

Chair Furfaro: Chief, as a North Shore resident, I want to thank you for really taking hold on this program and you got a lot of people on the North Shore that are very appreciative simply because there are a number of times, they do get cut off from the island.

Mr. Westerman: They are probably the most active group which is really good. They are a really good group in Kilauea.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2013-92 was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

C 2013-93 Communication (02/01/2013) from the Director of Finance and the IT Manager, requesting Council approval of the State Emergency Management System (EMS) Radio Site License Agreement to formalize the County's relationship with the State EMS public safety partners and their continued use of County radio sites.

- License Agreement No. 8829

Ms. Nakamura moved to approve C 2013-93, seconded by Mr. Rapozo.

There being no objections, the rules were suspended.

STEVEN A. HUNT, Director of Finance: This is a new co-locator agreement that we are working out with the State to do emergency broadcasting. There are other co-locaters that are involved in this but this helps defrays some of the cost of maintaining that tower and facilities. It would be new income to the County.

Ms. Yukimura: I just want to say *mahalo* to you and Brandon Raines for the initiative in tying this agreement down and more so for getting the State to agree to pay their fair share. Because they have not been doing it in the pass and it really makes sense that it would be a cost sharing for a site sharing. So, thank you especially given the fact that we... our resources are limited and the State gives us so many unfunded mandates. Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2013-93 was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

Chair Furfaro: Let us go back to Kamuela.

Mr. Watanabe: We are back on C 2013-88.

There being no objections, the rules were suspended.

Mr. Cobb-Adams: Aloha, and first of all thank you very much for giving me that time to respond and get it done today.

Chair Furfaro: A great recommendation by Mr. Rapozo.

Mr. Cobb-Adams: Awesome, I love that – getting it done.

Chair Furfaro: Let me tell you that you do not know how much we appreciate all of you people staying here. It helps to things out when you are here.

Mr. Cobb-Adams: The house is exactly like our other homes. It is not a group home, it is for single families that are at hard times. It is basically treated like a normal rental – any housing rental for a family that is having difficulty renting regular housing because of the price and give it to them at a decreased cost. For that reason, like in our Līhu'e Court, you cannot tell the difference. It is just a family that is having trouble making ends meet, so, they can stay up to two (2) years and if they are making progress but still struggling after two (2) years, there is an option for extension. The family can live there, generally it is a two (2) year thing with the encouragement to get them back on their feet, so that they can get a standard type rental or transition to an affordable rental like Kalepa or something like that.

Mr. Kagawa: Kamuela, I trust that KEO will at least oversee these tenants to make sure that they basically behave and are good neighbors, and should it get out of hand, that they can take action.

Mr. Cobb-Adams: Because of they are getting a decrease, they also get other services from KEO and they have to participate in these programs. For example, job building skills... so, it is an interactive program. They get a decrease rent but they also as part of their *kuleana* is to participate and show progress and so it is a good program. You have to show willingness to work the program otherwise you do not get to rent there. Yes, they are not be able to live there if they are not participating positively and being good renters.

Mr. Kagawa:

Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve 2013-88 was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

COMMITTEE REPORTS:

PUBLIC WORKS / PARKS & RECREATION COMMITTEE:

A report (No. CR-PWPR 2013-04) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be received for the record:

“PWPR 2013-03 Communication (01/24/2013) from Committee Chair Kagawa, requesting the presence of the County Engineer, to provide an update on the plans for the location previously occupied by Big Save, Inc., situated at 4444 Rice Street, Suite 301, Lihū’e,”

Mr. Kagawa moved for approval of the report, seconded by Ms. Nakamura.

A report (No. CR-PWPR 2013-05) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2460 - A BILL FOR AN ORDINANCE AMENDING CHAPTER 12, OF THE KAUAI COUNTY CODE 1987, AS AMENDED, ENTITLED “BUILDING CODE,”

Mr. Kagawa moved for approval of the report, seconded by Ms. Nakamura. (*See later for Bill No. 2460, Draft 1.*)

A report (No. CR-PWPR 2013-06) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2463 - A BILL FOR AN ORDINANCE AMENDING SECTION 19-1.4, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION,”

Mr. Kagawa moved for approval of the report, seconded by Ms. Nakamura. (*See later for Bill No. 2463*)

A report (No. CR-PWPR 2013-07) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Received for the Record:

“PWPR 2013-04 Communication (02/13/2013) from Committee Chair Kagawa, requesting the presence of the County Attorney and the Director of Parks & Recreation, to provide an overview and status of the terms and conditions involved in the UNITED STATES OF AMERICA VS. COUNTY OF KAUAI, CR. NO. 10-00614 (Newell’s Shearwater Issue),”

Mr. Kagawa moved for approval of the report, seconded by Ms. Nakamura.

Chair Furfaro: Gentlemen, all of these came out of Committee and I just want to say and you heard the motion to approve but I want to tell you what is concerning for me and I have not had the in-depth opportunity in the Committee levels. I want to make sure that we understand that we have at this point taken money from Pono Kai Revetment Wall, we have taken 'Aliomanu Road money, Mauna Kai Road and (inaudible) money, we have taken County wide storage facility and we have shifted those moneys for other projects. These are moneys that are in the Bond. We have also shifted two (2) Līhu'e elderly housing and Kekaha lateral landfill, phase two (2) that is where the money went to. What are we doing about replacing that money and do... what is our Bond... So, you had a preview of my question...

There being no objections, the rules were suspended.

Mr. Dill: I can give you the preview answer.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: We are going to have to move to the approval and I am sorry the reason why I went there is because those three (3) items all have impact on the CIP but we will wait. So, motion to approve was made on the items read in Committee, all those in favor? Oh, you have comment?

Mr. Kagawa: I would like to request Staff to send the minutes of CR-PWPR 2013-07 regarding United States of America vs. County of Kaua'i, the shearwater issue. I just want to get the minutes sent to our Congressional Delegation because I have previously discussed those items with a couple of our delegation and they are very concerned as well and I think they can really help us as we try to negotiate something that is fair and reasonable to our residents.

Chair Furfaro: Just on that note, last week I requested the State Legislature, our Representatives get copies of those minutes too. Any further discussion?

The motion to approve the Public Works / Parks & Recreation Committee Reports was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE:

A report (No. CR-FED 2013-03) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2462 - AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737 AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Hardy Street Improvements \$740,000.00*),"

Mr. Rapozo moved for approval of the report, seconded by Ms. Yukimura. (*See later for Bill No. 2462*)

Chair Furfaro: I just have to make reference to the CIP schedule that I have but if members want it, I will appreciate it in next couple of days that you distribute it to them. So, here is the item again. We have all of those Bond Counsel approved items that are now... that money is moving to Lihu'e elderly housing and to Kekaha Landfill Lateral Expansion. It is basically about ten million dollars (\$10,000,000.00) removing from those projects over to these other projects. This happens two (2) ways and this is what I want to make sure we understand, you move that money at the time we review the Capital Plan at budget time, that is one (1) way to do it. I only want to say to you right now that we have moved a lot of money. Is our Bond Counsel aware of what we had already moved? Do we know?

There being no objections, the rules were suspended.

Mr. Hunt: I am not sure the timing of the moves. We have been in contact with Bond Counsel regarding CIP budgets for this coming Fiscal and we are looking to make sure that it fits within the certain parameters whether it be BABS or other types of programs. So, we are in contact with them, or at least I have been with specifics Fiscal Year 2014 plans. I do not know from Fiscal Year 2013, I am assuming that they would have been in contact as well when those were moved.

Chair Furfaro: And we are talking about Mr. Hirai, right?

Mr. Watanabe: Yes.

Chair Furfaro: I am looking for some kind of written communication that tells us that he is aware of what we are moving. That brings me to this opportunity with using Pi'ikoi money. We and this is for the benefit of the Councilmembers, we can only agree to this move each year at budget time or by a special money bill which is what you have now for us for Hardy Street. I do want to also point out that we have moved miscellaneous almost another two point one (2.1) million of projects. I want a lot of attention at this budget session as it relates to these projects that pretty much now have been deferred and more importantly the money we are shifting away from the Pi'ikoi Building, how is that going to eventually get us to a point that the shopping complex, the Big Save space and so forth can be functional? Are you two (2) gentlemen aware of the Bill that Mr. Kouchi and Mr. Tokioka, and Mr. Kawakami introduced for us at the State which gives us about three hundred thousand dollars (\$300,000.00) of design moneys for that building. Are you currently aware of that?

Mr. Hunt: I am not.

Chair Furfaro: Okay. I would suggest that you have some reaction with our lobbyist to follow that Bill because the State gives us money to help with the design and then we do not have the CIP money to actually do the work is concerning. The State is not flushed with cash if you understand me. Ashley, did you just give them the two (2) Bills? Those are the Bills that I am referring to and I want to make sure we are very well coordinated with our Legislative group when it comes to getting us money. That is for design money. If I look at this whole thing, we have moved almost twelve million dollars (\$12,000,000.00) so far to other projects which have some priorities but when it is time to back up to the Bond Counsel to borrow some money... I am usually on that group that represents the Council and I want to make sure that we are certainly in concert.

Mr. Rapozo: Larry, we met regarding the... and I was going to bring this up during the Bill but since you are here, regarding that specific question about the Bond Funds. I am not sure if you were able to get their responses... Steve, you were not there but Larry was there. My concern is the use of the Bond Funds and the very frequent transfer that we have done. I am beginning to get concerned as well because I know... and we had that discussion a couple weeks ago. Were you able to... are you going to be here for the Bill?

Mr. Dill: If you want me here.

Mr. Rapozo: If you can answer the question now, I know you were going to check or someone was going to check.

Mr. Dill: You are asking the question if what specifically?

Mr. Rapozo: I had some concerns about the transfer of funds from the Bond and I cannot remember who you may have delegated it to, the day we met on this table, because that was my concern.

Mr. Dill: I have not gotten that information yet.

Chair Furfaro: Okay, so, you will not have that information when that item comes up a little later so I think we can excuse you since you already gave us your answer.

Mr. Dill: Okay.

Chair Furfaro: I just want to make sure that you gentlemen understand what I am saying, the Council allocates to you a pile of money for a group of projects, right? During budget time, you can modify that and so forth with the right kind of explanations which evidentially from last year we carried four (4). But after that one (1) period, any change that you make requires a money bill and just so we are all clear, I sent a message over to the County Attorney's Office to get that part of the Charter outlined for us. A lot of money has been moved from its original intent and many of those projects are about shoreline management. The other side we have projects where we had hoped they would be revenue centers for us and you are moving that money too by a way of Bill. I really want to start hearing from everybody at budget time. What are we doing about replacing those moneys? That is my concern because until they can do a design funding for us at the Legislature but until we actually start making the changes and upgrades to

that building and we have a plan that is going to sit empty a long time. Mr. Dill, did you make for us the request I had for the Space Planner and the disc, I think I got a broke-up message back.

Mr. Dill: Oh.

Chair Furfaro: Where are we at of getting seven (7) discs to the Councilmembers?

Mr. Dill: They were delivered today.

Chair Furfaro: Okay.

Mr. Dill: It is a two (2) volume report. The discs you got is volume one (1) which is the report itself. There is no disc... the second volume is a backup appendix of all the interviews, surveys, questionnaires, and backup data that supports the first volume. It is that thick, so I supplied one (1) hard copy of that.

Chair Furfaro: But that came over to us today?

Mr. Dill: Yes.

Chair Furfaro: Thank you very much for that. I will let the members know that it is available. The last piece, the Space Planner that we had, he is on our payroll?

Mr. Dill: That was done by a consultant.

Chair Furfaro: Who is our Space Planner that is on your Staff?

Mr. Dill: That is being done in Public Works and Ken Teshima is coordinating that.

Chair Furfaro: Ken Teshima. When we have that discussion, I want to make sure that Ken Teshima is available to us as well.

Mr. Dill: Okay.

Ms. Yukimura: Since we are on the Committee Report regarding the Hardy Street improvements, right, that is where we are at right now?

Chair Furfaro: Yes.

Ms. Yukimura: I did have an inquiry so that you do not have to stay for the final vote of the Bill. I want to know if the sidewalk improvements are scheduled through the Hardy Street Project to go all the way to Rice Street, right?

Mr. Dill: Correct.

Ms. Yukimura: Is it to be on both sides of the road that there is a sidewalk or just one (1) side?

Mr. Dill: Both sides.

Ms. Yukimura: It is to be on both sides?

Mr. Dill: I think.

Ms. Yukimura: Because there are some concerns about access and on street parking.

Mr. Dill: Yes, I understood that there were some concerns that came forth. I spoke to the Project Manager, Doug Haigh about that and we will be providing some onsite parking. Whereas now they are parking in the grass way...

Ms. Yukimura: Dirt.

Mr. Dill: ...or dirt. There will be paved parking provided on street now.

Chair Furfaro: Just so everybody understands now, Mr. Kagawa through me has asked you folks to be on the agenda again in his Committee next week.

Mr. Dill: Okay.

Chair Furfaro: Thank you members, I wanted to limit the conversation on that because we were referring to excepting the minutes from the meeting. Larry, so you will have no additional information for us later tonight, so I will excuse you.

Mr. Hooser: We do have some Bills and I was holding my questions until the Bill came up for Mr. Dill.

Chair Furfaro: Would you like to ask him now?

Mr. Hooser: But there is an item that we already passed on the Committee Reports.

Chair Furfaro: Yes, those three (3) that we passed in the Committee Reports.

Mr. Hooser: Yes, it was regarding the Building Code Bill.

Chair Furfaro: Okay, make some creative statement for me over here so we can honor his questions. I will offer him personal privilege.

Mr. Hooser: Mr. Dill on the agricultural building permit issue, it is my understanding that Council had until January something to do something and we missed our deadline and this is State law. We are compelled to pass the words that are there. What is the practice now with regards to building permits? Are we requiring people to do building permits or not? If we did not pass this law, what would be the net effect of it in the near term?

Mr. Dill: Well the State law is already in effect, so according to State law, we are required to provide or grant these Ag exemptions. The net effect of our Legislation with this Bill would be to inform applicants for exemptions that while they can get an exemption from requirement to get a building permit, they still are required to comply with HRS 464 in the event that they exceed the certain thresholds.

Mr. Hooser: But if the Council decided to defer action on this measure, would it have any impacts whatsoever?

Mr. Dill: The only impact that I understand would have... because the State law is already in effect so they can qualify for the exemptions. We would not be able to regulate compliance with HRS 464 but that might be a legal question that I would refer to the County Attorney on but that would be what I can see be the only effect and obviously that would be the concern that we have.

Mr. Hooser: Because right now for the last two (2) months, if you would, there has been no ordinance but yet the State law has been in effect.

Mr. Dill: Correct. I am aware of at least one (1) situation that is already come in without us passing our legislation at this level where we have complied with the State law and granted...

Mr. Hooser: So, you have told people that you do not need a permit?

Mr. Dill: Yes. They were aware of that and that is why they notified us.

Mr. Hooser: Okay.

Mr. Castillo: Has Larry Dill answered your question?

Mr. Hooser: If I could restate... if the Council deferred this measure does status quo continued and it is not the end of the world?

Mr. Castillo: That is right if the Council does defer this measure, the two (2) relevant statutes are in effect.

Mr. Hooser: The State statutes.

Mr. Castillo: Yes, the State statutes.

Mr. Hooser: And if we do approve the measure, the State statutes are still in effect?

Mr. Castillo: That is correct.

Mr. Hooser: Okay, that is it.

Chair Furfaro: I hope everybody understands what just happened here, Larry, I gave him the personal privilege so that you can go home.

Does everybody understand that? Any more questions for Mr. Dill? If I can ask the Staff, maybe we can push for another fifteen (15) minutes and then take a 7:30 dinner break and limit it to thirty (30) minutes? I want to hear from the Staff... yes... Okay, we are going to push on.

The motion to approve Committee Report CR-FED 2013-03 was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

Resolution No. 2013-39 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE LIQUOR CONTROL COMMISSION (*Pauline D. Ventura*): Mr. Kagawa moved to adopt Resolution No. 2013-39, seconded by Ms. Yukimura, and carried by the following vote:

FOR ADOPTION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2466) – A BILL FOR AN ORDINANCE ESTABLISHING A NEW ARTICLE 7, CHAPTER 12, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO LICENSED ELECTRICAL AND PLUMBING WORKERS

Mr. Rapozo moved to receive Proposed Draft Bill No. 2466 for the record, seconded by Ms. Nakamura.

Mr. Rapozo: The attempted here was to do kind of what the Ag exemption Bill was trying to do. Basically have a County ordinance that would mirror the State law. There are some legal questions in the Bill as we submitted and we are going to... at this time, request that we receive this Bill so we can pursue some other language that can hopefully satisfy the legal department. We will also be asking for posting and I am not sure if Councilmember Nakamura already requested that we would like to see that opinion released to the public.

Chair Furfaro: We have a motion to receive from both the author and the co-author of this Bill for right now and submit for a future posting?

Mr. Rapozo: Correct.

The motion to receive Proposed Draft Bill No. 2466 for the record was then put, and carried by a 6:0:1 vote (*Mr. Bynum excused*).

Proposed Draft Bill (No. 2467) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUAI COUNTY CODE 1987, AS AMENDED RELATING TO REAL PROPERTY TAX: Ms. Yukimura moved for passage of Proposed Draft Bill No. 2467 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for March 27, 2013, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Hooser, and carried by the following vote:

FOR PASSAGE:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR SECOND READING:

Bill No. 2460, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 12, OF THE KAUAI COUNTY CODE 1987, AS AMENDED, ENTITLED “BUILDING CODE”: Ms. Yukimura moved for adoption of Bill No. 2460, Draft 1, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Kagawa.

Mr. Hooser: As stated in the Committee Meeting, I got some real reservations about this measuring and would ask the Council to consider deferring this Bill. My reasons and my concerns that I stated last week but I will restate some of them are that we are basically being told that we do not have a choice. This is State law and we have to pass it no matter what. To me, it is bad public policy and the more I think about it the more, as was stated in an E-mail that we all got from an architect with hurricanes and waving building permits in general is bad public policy. Whether it is a small building or big building, it is just bad public policy. I want to support farming and want to see farmers get through but it begs the question, “what about everybody else?” If a little shed does not need a permit for a farmer, what about a little shed for somebody else? It does not discriminate against or I would not want to allow poisonous or dangerous chemicals to be housed on a structure that did not have to get a permit. I have mentioned this before, there is industrial farming – this you have to get a permit and there are lots of reasons. I do not know how we do our property tax and public records are usually based on permits and what I will try to do if the Council was willing to defer this, my thought was to talk to the Legislature both the House and the Senate... there are two (2) Bills on the table now dealing with this subject matter. I will ask them to change the date. The date in there, I want to say January something that we were supposed to pass the law and I do not think any Counties were able to do that, so it is reasonable to ask them to put a new Bill and allow us some County home rule powers to look at the law and shape it to better suit our County. I would certainly be willing to try that but I do not like to be put in a position to vote on something just because I have to. Whether I like it or not and that is the position I feel like I am in so the body can obviously do what they like but I will be voting no if I am forced to vote on it today, but I would prefer a deferral.

There being no objections, the rules were suspended.

Mr. Castillo: Council Chair, I am wondering if I can be able to clarify one (1) matter that was stated regarding being forced to vote on this Bill. I just wanted to comment on it, if I may?

Chair Furfaro: I would like to say that you can comment on it but I want you to know that I want to get my people out for a dinner break at 7:30 and we have three (3) more items, so we can complete it and maybe some of us can go home.

Mr. Castillo: Yes. The purpose of the Bill, there is no one that is saying that you have to pass this Bill. The endeavor of the Department is

merrily to have two (2) existing laws coincide in one (1) ordinance. That is all that it is. There was no rush. When the Bill was submitted to Councilmember Kagawa, the Department was not under the January deadline because they had already decided to proceed under Section (B). All that is happening is that you have two (2) present laws that in endeavor of the Department is to bring together the laws just for clarification. You still have the prerogative of having input to our State Legislature because Senate Bill 586 and House Bill 489 is presently going through the State Legislature. It is my understanding that this Bill which is 4688 will end up... what the Legislature is trying to do now is even loosening up more restrictions so building permits will not be needed. That is basically... I do not want anybody to think that you are being forced to do something, you are not. The laws that are into play right now are in effect.

Mr. Rapozo: What is the difference between this Bill and the State law? Does this Bill make it tougher?

Mr. Castillo: No it does not make it tougher.

Mr. Rapozo: Is it identical?

Mr. Castillo: Identical means same-same. They just move wording but they just... the placement of 464 is now within 4688 and so it did not make the law any harsher, no change, it does not change anything, and it is pretty much identical. They just moved some wording. 464 is the way that it is and it is only an incorporation of 464 into 4688. If I had a ramseyer version or something like that, I could show it to you but I cannot. But these are laws that already...

Chair Furfaro: (Inaudible).

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa: We held this item in my Committee and we asked a lot of questions on this item. We spent a lot of time on this item and I have come to the conclusion that based on what I am hearing from the County Attorney, Public Works, Doug Haigh in particular is that the State law is what we follow before the County law. They passed the Bill last session and we need to tie in our books, our laws with the State law and that is all we are doing. If we want to change the law, we need to have the Legislatures change that Bill or do a new Bill back and then we can follow. I think we were satisfied with our laws the way it was but the State took action and we need to tie in ours so there is no confusion. I will be supporting this measure today.

Ms. Yukimura: I wanted to ask Councilmember Hooser how long a deferral you would be asking for?

Mr. Hooser: The State passed a law and the law is now... the same section of the law is on the table in two (2) Committees. My thought was to encourage an amendment to that law and then deal with it after whether that happens or not. Otherwise if we pass this ordinance today, we will have to introduce a new ordinance in May or June. I guess a deferral till May if the end result is that there is really no impacts, then I do not see any harm in that. It could be shorter... the way the Legislative process works, obviously, it goes Committee by Committee so if it does not make the amendments that I am hoping that would make it in the first round of Committees than perhaps we could address it then. When I mentioned being

forced to vote on something, what I meant was when attempting to amend the Bill, we were told by the County Attorney's Office that it was a State law and we could not amend the Bill because the State said we have to do it this way. That is where the rub was for me. I think it is a reasonable thing to ask the Legislature, they gave us a date of January 1, 2013, they gave every County a date and no County has complied because we all got it too late. I think it is a reasonable thing to ask of them to move that date out until June 2013 to allow us to deal with the issue properly. That would be the one (1) specific change that I would suggest and then I would go further than that asking them to allow us to deal with this in a County's specific manner so we could make those amendments if we needed to.

Chair Furfaro:

Did that answer your question, JoAnn?

Ms. Yukimura: My understanding was that our power to amend this Bill through an ordinance was fairly limited. We really basically could only add exemptions from what I understood. I do not know if that is the framing that remains after the Legislature amends the Bill then we are not going to have enough flexibility to address some of your issues. I have a lot of questions about whether we can amend based on use when these are building code mainly structural issues, so I am concerned about that. I am somewhat concerned about the Farm Bureau and those who have been working on this although as I did explain on the floor of the meeting last week, I am also not sure that this whole approach is the best way to achieve their purposes.

Mr. Hooser: (Inaudible) I know it is a late night and there may be limited or no success at the Legislature, I am just not prepared to vote and support of it today.

Ms. Nakamura: I am prepared to vote for it today but I am also open to... and would encourage you to pursue it and then if we can amend it following the Legislation Session, let us introduce something that would give us more flexibility and take it into account our concerns.

Chair Furfaro: I feel the same way. If we can defer and get some of our concerns heard a different way, I think that is appropriate. I know what you meant with the bad rub.

Mr. Hooser moved to defer Bill No. 2460, Draft 1, seconded by Mr. Rapozo, and carried by the following vote:

FOR DEFERRAL:	Hooser, Rapozo, Yukimura, Furfaro	TOTAL - 4,
AGAINST DEFERRAL:	Kagawa, Nakamura,	TOTAL - 2,
EXCUSED & NOT VOTING:	Bynum	TOTAL - 1,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Mr. Hooser: Chair, I mentioned in my discussion to defer after the Legislative Session.

Chair Furfaro: So noted.

Ms. Yukimura: Can we defer until after the Legislation Session?

Mr. Rapozo: No. It is for two (2) weeks.

Chair Furfaro: The members were only voting for two (2) weeks.

Mr. Hooser: Okay, I was not clear about the deferral.

Mr. Rapozo: You cannot amend the motion to defer.

Chair Furfaro: Clerk, did you note it?

Mr. Watanabe: Yes, the motion to defer means two (2) weeks. Comes back to the next meeting.

Chair Furfaro: Okay.

Bill No. 2462 – AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737 AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND (*Hardy Street Improvements \$740,000.00*): Ms. Yukimura moved for adoption of Bill No. 2462, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Ms. Nakamura.

Mr. Rapozo: I think you heard my question of Mr. Dill. When we met with Buildings and Public Works, I guess it was probably two (2) weeks ago, I made a specific request with your same concerns, Mr. Chair. I am very concerned as we move into the budget that we have moved quite a bit of funds. My question was a simple one (1) and I just wanted clarification from the Finance Department, this was pre-Steve Hunt's time so Steve, you are off the hook, that we were doing everything above board. That in fact our Bond companies and the Bond Counsel, everybody was aware and that in fact, these transfers were legal because these bonds that we have floated, these money's that we borrowed and they are substantial come with significant penalties if we should not spend down the money as the bond requires. I asked a simple question and Mr. Dill, I cannot remember who he delegated that task to but I was assured that I would get that information before the vote time and I have not. As much as I hate to defer items, I also believe that if the Council is asking some relevant information, and I was actually very pleased to hear that you had the same concerns. We have not spoken about that and I was very concerned...I mean I am very happy that you have the same concerns because it is a substantial amount of money. Again, I hate to defer items, but I do not feel that I got the responses that—I think was a pretty reasonable request, just a letter from the Finance Director, Finance Department Deputy Director saying that everything was in order. I have not received that. That gives me even more concern. I would be asking that we defer this until we get some verification from bond counsel, that in fact, everything is okay. Thank you.

Chair Furfaro: Anyone else? JoAnn.

Ms. Yukimura: I believe this is within the ambit of a bond. I do not have any doubts about it, in fact. Also, I think that we have at least as I understand it, we have completed the mission of these moneys as designated in our Budget, and because there is left over, we are allocating it to these Hardy Street improvements, which I believe are a priority. I would like to see us vote on it.

Chair Furfaro: Okay. Mr. Kagawa.

Mr. Kagawa: Yes, I also will be supporting it, eighty (80)/twenty (20) matching. We are going to have some nice improvements that to me, will be a good test to see if our people on Kaua'i are happy with Complete Streets, and bikeways. We will see how that works. There are a lot of people in Lihu'e that take advantage and jog, and what not. I think the improvements will do. It will be much appreciated by them. I look forward to these improvements, and especially look forward to the Federal matching funds that will help to stimulate our construction industry.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: I just have a question. What is the downside of a deferral? Is there someone here who can answer that? Does it affect bond ratings, or is our project in jeopardy or anything like that?

Ms. Yukimura:
Larry.

No. We should have asked that question to

Mr. Hooser:

Okay.

Chair Furfaro: Let me just summarize the field of questions that I put out there. I am going to support this today, but I am sending a message over to Finance, and to the Administration. My concern is that I want to see that we have something from Mr. Hirai that they are aware of the moneys we moved. The second part of that question is that I am getting a little worried that we have got our revenue center sitting across the street, asking for help from the State Legislature on design funds, and I just do not want to find ourselves putting a design plan together, and it sits on the shelf. I am saving my...you know those little Red Hots you get as candy? I am saving that for the Budget. Be ready for it, but I will vote for this today. Go ahead.

Mr. Rapozo: Thank you, Mr. Chair. I just wanted to speak about what Mr. Hooser talked about as far as bond ratings being jeopardized. My concern is, and I am hoping we can get it posted, Mr. Chair, for a future session with Mr. Hirai, even if it is by telephone. What I would like to see is Mr. Hirai, and I am hoping that he has been part of these projects where the moneys have been moved. I am a little worried today more so because I made a specific request for the information that I did not get. I know Councilmember Yukimura, you believe that it is part of the parameters. I do not even know what the parameters are for this bond. Maybe you do, but I do not. I do not know what the parameters are. That is what they told me that it was, "As long as it is project that is like that other project, it is okay." I want to hear it from the Bond Counsel. If it was that simple, why could I not get a letter to that effect in two (2) weeks, if in fact, my vote...maybe you counted the votes, and said, "Do not worry, we have the five (5) or we have the four (4) so we do not need to answer Mel's questions." But I think my questions are relevant ones. I do not think the deferral is going to hurt the project at all, for two (2) weeks. I really do not. That is fine, it will go by the votes. Obviously, after the discussion, I am going to try and make a motion to defer, but I do not think it is unreasonable to ask a financial question. Amy, it is okay the way we are moving these moneys? We spent a lot of (inaudible), Mr. Furfaro, I believe was on that trip, justifying these budgets when we went to go for the (inaudible), if I am not mistaken.

Chair Furfaro: No, I go with the Administration representing the Council, when we went to (inaudible) the moneys. You are correct.

Mr. Rapozo: Right. There are a lot of requirements and restrictions that relates to these types of bonds. One (1) of the restrictions, or one (1) of the requirements is that we spend down the bond in a specific time, but we keep changing the projects, which is a concern. I just wanted that clarification, and it I cannot get that clarification then I will not support it today. Thank you.

Chair Furfaro: You have the floor, JoAnn.

Ms. Yukimura: I think it is a perfectly legitimate question to ask, and I am not opposing that, but I am...unless we are really sure that, that delay is okay. I am against assuming that delay is okay, and I also feel...I am pretty clear that the requirements for bond categories are pretty general, otherwise they would make bond expenditures very difficult, and I am joined by my past memory and experience. I do not think it is a sufficient reason to delay this particular project.

Chair Furfaro: Okay. Everybody has voiced their concerns. You heard the two (2) questions we are sending over, Steve. I would certainly hope that we could get the answer in a week. I think Mr. Kagawa's point was very well taken, in the fact that we are trying to leverage for some Federal money that is available now, and yet we have no idea where the feds are going on Friday, right?

Ms. Yukimura: The sooner, better.

Chair Furfaro: Yes, the sooner we know, the better. I just want to make sure, I am supporting this, but I have questions that I want to see responded in writing. I am prepared to answer Mr. Rapozo if we have Mr. Hirai here in the near future to post an agenda item, or even do a conference call. Please understand, it is also the empty space that sits right now, and I have an additional worry. With the empty space, it is the Council's Budget that is paying rent outside for our Auditor. It is a lot of moving parts right now. On that note, this is a roll call vote, and we have a motion and a second. I did not hear a second on the deferral.

Mr. Rapozo moved to defer Bill No. 2462, seconded by Mr. Hooser, and carried by the following vote:

FOR DEFERRAL: Hooser, Nakamura, Rapozo,	TOTAL – 3,
AGAINST DEFERRAL: Kagawa, Yukimura, Furfaro	TOTAL – 3,
EXCUSED & NOT VOTING: Bynum	TOTAL – 1.

Chair Furfaro: The motion fails, but I want to refer to our rules. We have a three (3) to three (3) tie. This automatically comes back in two (2) weeks? Let us get an interpretation. Let us hear it for the public, not just a shaking of the head. A deferral has precedent over all other motions. Peter, we have got an interpretational question. I just want to get it real clear so we can refer to the public on what is going on. They have the book down here Peter. After a day of surfing the Pipeline at twenty (20) feet, we can all be pretty tired. Members, can I have your attention for a three (3) to three (3) vote here.

PETER MORIMOTO, Legal Analyst: Good evening, Councilmembers. Peter Morimoto, Analyst. I am referring to Rule 5(e) of the Council Rules: Council Absence, Tie Vote. "At a Council meeting, if members are evenly divided on any main motion or if there are insufficient votes to carry any main motion because of the absence of a member, the item shall be made the special order of the day for the next regular meeting." However, this is not a main motion, and given that it is not a main motion...

Chair Furfaro: Okay, thank you, Peter. My interpretation is correct. This will go to the next meeting.

Mr. Morimoto: No, that is if it is the main motion.

Chair Furfaro: That is the main motion.

Mr. Morimoto: I believe the main motion was a motion to approve.

Chair Furfaro: Okay, we are going to go on a recess here because a deferral motion as a motion, supersedes other motions.

Mr. Morimoto: That is correct.

Chair Furfaro: We are on a caption break so you and the Clerk can have some time together, if you do not mind.

There being no objections, the Council recessed at 7:45 p.m.

There being no objections, the Council reconvened at 7:53 p.m., and proceeded as follows:

Chair Furfaro: Peter, we had to refer to Robert's Rules because of certain interpretations in our Rules that are "silent."

Mr. Morimoto: Yes.

Chair Furfaro: But I think it is going to get us to the same place. Please cover this.

Mr. Morimoto: This is from Robert's Rule of Order, "the basic form of motion, the only one (1) who's introduction brings business before the assembly is a main motion." In this case, the motion to approve was the main motion. Robert's further states that, "there are also many other separate parliamentary motions that have evolved for specific purposes." In this case, the motion to defer is a parliamentary motion. Because the motion to defer ended up in a 3:3 vote, it did not pass.

Chair Furfaro: So the motion to defer did not pass because of the 3:3 tie?

Mr. Morimoto: Correct.

Chair Furfaro: Therefore we move on to vote on the approval. We can then go to the main motion as approval.

Mr. Morimoto: The pending motion, yes.

Chair Furfaro: And then if that ends up in a 3:3 tie, the interpretation... it will be the first item on our next meeting?

Mr. Morimoto: That is correct.

Chair Furfaro: Okay. Your motion to defer failed and we are back to the motion to approve. Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Ms. Yukimura: Discussion?

Chair Furfaro: Discussion.

Ms. Yukimura: I just called Mr. Dill and they are opening bids on Hardy Street on March 5th so time is of the essence.

Chair Furfaro: Time is of the essence but the fact is... they opened the bid does not mean they go ahead and sign the contract.

Ms. Yukimura: Yes.

Chair Furfaro: I want to make sure we all understand. Just because they are opening the bid does not mean we need to enter the same day into the contract. They are going to evaluate, compare the bids, make sure they cover all the scope, and so forth.

Ms. Yukimura: It is still very immanent.

Chair Furfaro: Well then they are going to do it illegally if they do not have our approval. How is that?

Ms. Yukimura: I am not suggesting that... I am just trying to say that the project is underway. If we think it is a good project, we need to approve it and move it...

Chair Furfaro: I do not think anybody is questioning the value of the project especially when Federal moneys are available. I just want to make sure that the day you open the bid is not necessarily the day... I mean what if there are serious discrepancies in the price and they have to go back and negotiate it? I want to get to this vote on the approval and if it comes out the same, it will automatically come back in two (2) weeks. I understand your concern that they are opening the bids on the 5th but that does not mean they enter into contracts on the 5th.

Mr. Rapozo: There also could be some serious ramifications with the Bond issue that could affect not only this project but many others. I would ask the same courtesy. I asked them a question two (2) weeks ago and they chose not to respond. It was a valid question. Two (2) weeks is not going to cost us the Federal match.

Chair Furfaro:
on the main motion.

On that note, I am going to call for the vote

The motion to approve Bill No. 2462 was then put and by the following vote:

FOR APPROVAL:	Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 4,
AGAINST APPROVAL:	Nakamura, Rapozo	TOTAL – 2,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Watanabe: Four (4) ayes and two (2) nos. Motion carries.

Chair Furfaro: The motion carried 4:2. We did not end up in another tie which would have brought it back in two (2) weeks.

Mr. Rapozo: Mr. Chair, I just wanted to make sure that the discussion we had about the briefing with the Bond Counsel will still happened.

Chair Furfaro: Most definitely. My approval was with some conditions.

Bill No. 2463 – A BILL FOR AN ORDINANCE AMENDING SECTION 19-1.4, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PARKS AND RECREATION: Ms. Nakamura moved to adopt Bill No. 2463 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Kagawa.

Chair Furfaro: Is there any discussion on this Bill?

Mr. Kagawa: As the Chair of the Parks Committee, we discussed this as well but we did not discuss it as long as other items, and I have received some E-mails about... and I want to reiterate that this Bill is meant for the Police to have some grounds to remove or stop unruly campers from drinking or disturbing others. The responsible campers; I was told, are not going to be bothered. I want to reiterate that if you do not want to get into trouble, do not drink pass 11:00 p.m. and it will be okay. Sometimes we have to take drastic moves that will affect innocent people; however, we are always looking at the community as a whole and I believe that this is a good Bill. It is not a perfect Bill but it is a good Bill.

Mr. Rapozo: Mr. Kagawa, again I was not here last week but I did raise a concern about the exemptions – will the camping removed? It was. So now it is everybody? Okay. Thank you.

Chair Furfaro: Okay. Any further discussion? If not, a roll call vote on this, please.

The motion to adopt Bill No. 2463 on second and final reading was then put, and carried by the following vote:

FOR APPROVAL:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 6,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Watanabe:

Six (6) ayes, motion carries.

Chair Furfaro: I want to share with you folks that we need to finish Executive Sessions ES-60 and 603. I need the County Attorney up for that and for item 602 which we will hold last because I have a recusal letter on myself for that. I do want to let go the majority of the Staff for the evening except those associated with the Executive Session. Camera production, Ho'ike, after we close this out, you are finished for the day.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Good evening Council Chair, Councilmembers, County Attorney, Al Castillo. For your consideration ES-601, ES-602, and ES-603.

EXECUTIVE SESSIONS:

ES-601 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing related to the procurement violation stated in the Management Advisory Report Finding 12-01 "Review Purchasing and Procurement Process of Independent Contractors" and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-602 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4, 92-5(a)(4), and Section 3.07(E) of the Kaua'i County Charter, the Office of the County Attorney, on behalf of the Council, requests an executive session with the Council to provide the Council with a briefing regarding the claim against the County by Joseph Furfaro, filed on or about October 30, 2012, and previously on the Council's agenda as C 2012-441, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-603 Pursuant to Hawai'i Revised Statutes (HRS) Section 92-4, 92-5(a)(4), and Section 3.07(E) of the Kaua'i County Charter, the Office of the County Attorney, on behalf of the Council, requests an executive session with the Council to provide the Council with a briefing and update regarding the Puhi Metals Recycling Center issues and related matters. This briefing and consultation involved the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa moved to convene in Executive Session for ES-601 and ES-603, seconded by Ms. Yukimura, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL - 6,
AGAINST EXECUTIVE SESSION:	Bynum	TOTAL - 1,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Mr. Watanabe: Six (6) ayes.

Chair Furfaro: Okay, the next item, I am going to step out.

(Chair Furfaro was recused from ES-602.)

The motion to convene in Executive Session for ES-602 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Hooser, Kagawa, Nakamura, Rapozo,	
	Yukimura	TOTAL – 5,
AGAINST EXECUTIVE SESSION:	Bynum	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL – 1.

Clerk: Five (5) ayes.

Ms. Nakamura: We are going to take a forty-five (45) minute dinner break and we will convene in the Executive Session room at 8:45 p.m.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:04 p.m.

Respectfully submitted,



RICKY WATANABE
County Clerk

:aa:dmc:cy

